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**INTERNATIONAL COVENANT  
ON CIVIL AND POLITICAL RIGHTS**

**REPORT OF CANADA  
on Implementation of the Provisions of the Covenant**

**March 1979**

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INTERNATIONAL COVENANT  
ON CIVIL AND POLITICAL RIGHTS

REPORT OF CANADA

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March 1979



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## Preface

We are pleased to make available to the Canadian public Canada's report on the implementation of the provisions of the International Covenant on Civil and Political Rights. Canada acceded to this Covenant of the United Nations on May 19, 1976 and the Covenant entered into force for Canada three months later, on August 19, 1976.

This report has been prepared in response to Article 40 of the Covenant which provides that the States Parties to the Covenant undertake to submit reports on the measures they have adopted which give effect to the rights recognized in the Covenant and on the progress made in the enjoyment of those rights.

This is the first such report to be submitted by Canada under the International Covenant on Civil and Political Rights. It was submitted to the Secretary-General of the United Nations by the Secretary of State for External Affairs in April 1979 for onward transmission to the Human Rights Committee for its consideration.

The Committee may transmit any comments it considers appropriate to the State Parties. The Committee may also transmit the reports and its comments to the United Nations' Economic and Social Council (ECOSOC). Finally, the Committee is required to submit an annual report on its activities to the General Assembly of the United Nations.

The preparation of Canada's report was made possible through the co-operation of the federal and the provincial governments. The Department of Justice co-ordinated the preparation of the part dealing with the federal law and the law of the Northwest Territories and of the Yukon. On the provincial side, some of the provinces prepared their own sections which are reproduced in this report. The Department of the Secretary of State which was responsible for co-ordinating the Canadian report as a whole, prepared the section on the other provinces on the basis of material furnished by those provinces.

This report is a technical document rather than a literary work. It represents the collective efforts of many people across the country reporting on Canada's progress in meeting the terms of this important international agreement.

Department of the Secretary of State  
Group Understanding and Human Rights

March 1979





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## REPORT OF CANADA ON IMPLEMENTATION OF THE PROVISIONS OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

The International Covenant on Civil and Political Rights and the Optional Protocol to the International Covenant on Civil and Political Rights were adopted by the United Nations General Assembly on December 16, 1966 and came into effect on March 23, 1976. On May 19, 1976, Canada acceded to the Covenant and to its Optional Protocol. Since the instruments of accession to these agreements were deposited that day with the Secretary-General of the United Nations, the said Covenant and Protocol took effect in Canada on August 19, 1976.

This report is submitted in accordance with Article 40 of the International Covenant on Civil and Political Rights. It is divided into two parts: the first places the International Covenant on Civil and Political Rights in the context of the Canadian constitutional system, while the second examines Canadian law at the national, territorial and provincial levels to determine to what degree it is consistent with the Covenant.

### I. Introduction: The Canadian constitutional system and the Covenant

Canada is a federal state made up of ten provinces, Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland, Nova Scotia, Ontario, Prince Edward Island, Quebec and Saskatchewan, and two territories, the Northwest Territories and the Yukon Territory.

The principal characteristic of federal states is the division of powers between the various levels of government. Canada is no exception to this rule. Within Canada, governmental powers are exercised by the federal government, the provincial governments and, pursuant to a delegation of powers by Parliament, the territorial governments.

Canada's accession to the International Covenant on Civil and Political Rights and to its Optional Protocol has both international and domestic implications.

At the international level, by acceding to the Covenant, Canada undertook to respect and to guarantee to all individuals within its territory, and subject to its jurisdiction, the rights recognized in the Covenant without discrimination of any kind, such as on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, not only in the fields under federal jurisdiction, but also in the fields under provincial jurisdiction. Indeed, Article 50 of the Covenant clearly states that "the provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions." Further, by acceding to the Optional Protocol to the International Covenant on Civil and Political Rights, the Government of Canada recognized the jurisdiction of the Human Rights Committee to receive and consider communications from individuals within its jurisdiction claiming to be victims of a violation by Canada of any of the rights set forth in the Covenant, and this whether such breach occurs in a field over which Parliament or the provincial legislatures have jurisdiction. Such persons must, however, exhaust all available domestic remedies, before presenting their communications to the Committee. Therefore, the

Government of Canada is answerable to the international community for non-compliance in Canada with the obligations assumed when, exercising its jurisdiction over foreign relations, it acceded to the Covenant and Optional Protocol, whether the non-compliance occurs in a field under its jurisdiction or that of the provinces.

In Canada, international treaty law is not automatically a part of the law of the land. The provisions of a treaty may be incorporated into domestic law either by enacting legislation giving to a treaty force of law, or, if necessary, by amending domestic law to make it accord with a treaty. In general, however, the Canadian constitution does not authorize Parliament to legislate in fields under provincial jurisdiction to give effect to obligations assumed under a treaty. Thus, implementation of a treaty whose provisions come under one or the other, or both levels of government requires action by the Parliament of Canada, the provincial legislatures, and, unless Parliament decides otherwise, the territorial legislative councils for those portions of the treaty that fall under their respective jurisdictions.

The British North America Act, 1867, 30 & 31 Victoria, ch. 3 (U.K.), makes no provision for the protection of human rights, save for a series of provisions concerning federal and provincial political institutions (ss. 9-88 as complemented by statutes and Orders in Council creating new provinces or authorizing their admission to the Canadian federation, the whole as amended by the unwritten part of the Canadian constitution) and a limited constitutional protection pertaining to use of the French and English languages (s. 133) and to special guarantees with respect to denominational schools (s. 93). An examination of the Covenant with



reference to the provisions of the Act pertaining to the division of legislative powers between the federal Parliament and the provincial legislatures (ss. 91, 92, 93, 94, 94A, 95, 96, 99, 100 and 101) reveals that the protection of human rights, and thus the implementation of the provisions of the Covenant, generally falls under the jurisdiction of both levels of government.

- a) With respect to federal jurisdiction the obligations assumed by the Government of Canada when it acceded to the International Covenant concern mainly, but not exclusively, the jurisdiction which the British North America Act confers upon Parliament with respect to naturalization and aliens (s. 91(25)), marriage and divorce (s. 91(26)), criminal law and procedure in criminal matters (s. 91(27)), and the establishment, maintenance and management of penitentiaries (s. 91(28)). In addition, in those parts of Canada not organized into provinces and where, therefore, it has full jurisdiction, that is, where it exercises both the jurisdiction of the federal state and that of a province, Parliament can give effect to all the obligations which, by acceding to the Covenant and Optional Protocol, it has assumed toward the international community (British North America Act, 1871, 34 & 35 Victoria, ch. 28, s. 4 (U.K.)). Parliament has divided these areas into two territories, the Northwest Territories and the Yukon Territory, and has provided each of them with a government. In each territory, the government consists of a legislative council, elected by secret ballot within a uninominal, one round system of balloting, and an executive appointed by the Governor in Council and not answerable to the territory's

legislative council. Parliament has delegated to the territories' councils many of the powers enjoyed by the provincial legislatures, so that within their areas of jurisdiction, the obligations of the territorial governments, with respect to implementing the Covenant, are similar to those of the provinces (Northwest Territories Act, R.S.C. 1970, ch. N-22, ss. 8, 8.1, 9, 12, 13, 14 and 15; Yukon Act, R.S.C. 1970, ch. Y-2, ss. 9, 9.1, 14, 15, 16, 17, 18 and 19).

- b) With respect to provincial jurisdiction, the provisions of the Covenant concern mainly the jurisdiction which each provincial legislature has, within its territory, with respect to the establishment, maintenance and management of public and reformatory prisons (s. 92(6)), municipal institutions (s. 92(8)), the solemnization of marriage (s. 92(12)), property and civil rights (s. 92(13)), the administration of justice and procedure in civil courts (s. 92(14)), the imposition of punishment for enforcing any law of the province (s. 92(15)), education, except for certain restrictions to protect denominational schools (s. 93), and generally all matters of a merely local or private nature (s. 92(16)).

Given the fact that Parliament did not have jurisdiction to give effect to all the obligations which Canada assumed toward the international community by acceding to the Covenant and its Optional Protocol, the Government of Canada consulted the provinces before acceding to the Covenant and the Protocol, and the latter undertook to ensure compliance with those provisions of the Covenant falling within their jurisdiction. Obtaining provincial consent in no way changes the international responsibility of the Government of Canada.



However, from a domestic standpoint, the fact that the provinces consented to Canada's accession to the Covenant means that they, like the federal government, agree to take the necessary measures to give effect to the rights recognized in the Covenant. Moreover, the Government of Canada and the governments of the Northwest Territories and the Yukon Territory have been discussing whatever additional measures might have to be taken in order to give effect to the provisions of the Covenant.

Although all governments in Canada undertook to give effect to the provisions of the Covenant, no government has, as yet, decided to incorporate into its domestic legislation the provisions of the Covenant which fall within the scope of its jurisdiction. However, to fulfil its obligations under the Covenant, each government has committed itself to amend domestic law in order to bring it into accord with the Covenant wherever this might prove necessary.

Since the Covenant was not incorporated into domestic law and, therefore, does not have force of law at the federal, provincial and territorial levels, an individual cannot base a recourse on the Covenant itself if there has occurred within Canada a breach of a right or freedom therein recognized. However, the said individual can resort to the remedies provided in Canadian law to have his rights respected.

In conclusion, we should mention the Federal-Provincial Conference on Human Rights held in Ottawa on December 11 and 12, 1975. This conference enabled the federal and provincial governments to agree on the mechanisms for implementing in Canada the treaties, conventions and other international instruments concerning human rights. This con-

ference also set up the Continuing Federal-Provincial Committee of Officials responsible for Human Rights. The mandate of this committee is to allow, on a permanent basis, for federal-provincial discussions on matters related to human rights.

## II. Canadian Law

In Canada, protection of the individual's rights and freedoms is a subject of both federal and provincial jurisdiction. In addition, the territorial governments may also legislate to protect human rights since the federal Parliament has delegated to them the powers necessary to do so. In the exercise of their powers, all these governments have adopted an array of legislation to protect not only the rights and freedoms recognized in the International Covenant on Civil and Political Rights, but also rights and freedoms which it does not mention, such as the right to property and protection against any form of arbitrary exile.

In order for Canada to meet the obligations it assumed under the Covenant, Canadian law must, at the federal, territorial and provincial levels, comply with the provisions of the Covenant. Three factors must be taken into account in determining the degree of consistency with the Covenant:

- a) Canadian law applies to everyone; therefore, unless otherwise expressly provided, any person within Canadian territory may claim the protection of Canadian law, to which he is also subject;
- b) in all cases where the common law or Canadian statute law do not, directly or by interpretation, prohibit a practice regarded as contrary to the Covenant, such practice is lawful;



- c) where the exercise of fundamental freedoms does not require legislative intervention, these freedoms can be exercised except where they are limited or prohibited by some legislative provision.

The Report submitted by Canada to the Human Rights Committee deals only with the rights and freedoms recognized in the Covenant. Further, in view of the fact that Canada is a federal state, this Report deals not only with federal law but also with the law of the Northwest Territories and the Yukon Territory, and that of each Canadian province. It also mentions, when this is required, various administrative measures which give effect to the rights and freedoms recognized in the Covenant. Finally, in this Report, in order to simplify the citation of acts, regulations, orders in council and government directives, all references to such texts should be read as references to the text as amended.

A. Examination of the federal law and of the law of the Northwest Territories and of that of the Yukon Territory

The examination of federal law is divided into two parts: the first deals with the measures taken to guarantee the rights and freedoms recognized in the Covenant in fields under federal jurisdiction, other than those delegated to the territorial governments; the second part, which was prepared by the Government of Canada, deals with measures in force in the Northwest Territories and in the Yukon Territory to protect the rights and freedoms recognized in the Covenant.

1. Examination of the federal law

At the federal level, any study, the object of which

is to determine whether federal law is consistent with the International Covenant on Civil and Political Rights, must take into account three extremely important enactments; namely the Canadian Bill of Rights, R.S.C. 1970, Appendix III, the Criminal Code, R.S.C. 1970, ch. C-34, and the Canadian Human Rights Act, S.C. 1976-77, ch. 33.

The Canadian Bill of Rights was passed by Parliament on August 10, 1960. This enactment, which applies only to fields under the legislative authority of Parliament, allows the Courts to hold as inoperative all "laws of Canada", as well as the orders, rules or regulations made thereunder,<sup>(1)</sup> if such laws, rules or regulations abrogate, abridge or infringe any of the rights or freedoms therein recognized. The scope of the Bill is, however, limited. It protects only the rights and freedoms mentioned in it. Furthermore, the Bill cannot be invoked against acts, or things done, or orders or regulations made under the War Measures Act; or against any law which expressly excludes its operation (Canadian Bill of Rights, ss. 2 and 5(2) and (3); War Measures Act, R.S.C. 1970, ch. W-2, s. 6 (5)).

- (1) Ordinances passed by the Commissioners in Council of the Northwest Territories and the Yukon Territory, as well as the regulations made thereunder, must be considered "laws of Canada" within the meaning of s. 5(2) of the Canadian Bill of Rights. This results from the fact that the Commissioners in Council of the Northwest Territories and the Yukon Territory were created by Acts of the Parliament of Canada and exercise powers delegated to them by such Acts. This being the case, these ordinances must be considered as having been made under a law of Canada (The Queen v Drybones, (1970) S.C.R. p. 282 (291)). The expression "law of Canada" as defined in s. 5(2) of the Bill also includes "any law in force in Canada or in any part of Canada at the commencement (of that Act which are) subject to be repealed, abolished or altered by the Parliament of Canada". This means that English common and statute law incorporated into the law of the territories (Northwest Territories Act, R.S.C. 1970, ch. N-22, s. 18(1); Yukon Act, R.S.C. 1970, ch. Y-2, s. 22(1)) is also subject to the Bill.



In the Criminal Code, the Parliament of Canada prohibits certain acts which constitute a violation of the rights and freedoms recognized in the Covenant and provides that persons who commit such acts can be prosecuted before the criminal courts. It also recognizes in the Code the rights possessed by individuals charged with having committed indictable offences or summary conviction offences and, exceptions apart, it does so regardless of the law under which such offences were committed. This extension of the provisions of the Criminal Code results from s. 27(2) of the Interpretation Act, R.S.C. 1970, ch. I-23. This section states that all the provisions of the Criminal Code relating to indictable offences and to summary conviction offences apply to all such offences created by an enactment other than the Criminal Code except to the extent that the enactment otherwise provides.

In the Canadian Human Rights Act, S.C. 1976-77, ch. 33, Parliament, in order to insure equality of opportunity amongst individuals, forbids, in employment or the provision of goods and services, including the provision of residential accommodations or commercial premises, any discrimination based on prohibited grounds; namely, race, national or ethnic origin, colour, religion, age, sex, marital status, conviction for which a pardon has been granted and, in matters related to employment, physical handicap. It also forbids the use by a person or a group of persons acting in concert of the telephone facilities of a telecommunication undertaking which falls within the legislative authority of Parliament in order to expose to hatred or contempt any person or persons identifiable on the basis of a prohibited ground of discrimination (s. 2(a); ss. 3-18, s. 20). Any person who is the victim of a prohibited act of discrimination can lay a complaint

before the Canadian Human Rights Commission. The Commission, if it finds that the complaint is justified and that it falls within the scope of its jurisdiction, shall undertake to bring about a resolution, voluntary or otherwise, of the complaint (ss. 31-46).

Further, Parliament also provides in the Canadian Human Rights Act, that all Canadian citizens and all permanent residents of Canada (landed immigrants who have not lost their permanent resident status, but have not yet acquired Canadian citizenship) have, in so far as it is consistent with the public interest, the right of access to governmental records containing personal information concerning them for any purpose including the purpose of ensuring accuracy and completeness (ss. 2(b) and 52(1)). In order to insure effective protection of this right, Parliament has provided for the appointment of a Privacy Commissioner. The Privacy Commissioner, who is a member of the Canadian Human Rights Commission, must investigate complaints made by individuals who allege that they are not being accorded the right of access to which they are entitled under the Act (ss. 58-59).

Before beginning a detailed examination of the federal legislation related to the provisions of the Covenant, we should mention that the Interdepartmental Human Rights Committee is currently studying federal law in order to determine to what extent it is in accordance with the Covenant, and recommend whatever changes are required to bring it into line with the Covenant.

#### Article 1

Canada subscribes to the principles set forth in this Article.

Article 2

This Article of the Covenant states the obligations which Canada undertook when it acceded to the International Covenant on Civil and Political Rights.

Paragraphs 1 and 2: As a party to the Covenant, Canada undertook, without any restriction whatsoever, to respect and to guarantee to all individuals within its territory the rights recognized in the Covenant. Although Parliament has not passed a statute giving the Covenant the force of law at the federal level, persons within Canadian territory already enjoy, in the spheres under the legislative jurisdiction of Parliament, most of the rights and freedoms recognized by the Covenant, because Parliament has recognized these rights and freedoms in its statutes.

When an Act of Parliament recognizes or protects a right or freedom recognized by the Covenant, this recognition or protection is not, save exceptions, subject to any discriminatory restriction based on race, colour, sex, language or other grounds of distinction prohibited by the Covenant. Legislation passed by Parliament is of general application and applies to everyone without discrimination unless there are express provisions to the contrary. Furthermore, in s.1 of the Canadian Bill of Rights, Parliament recognized that certain rights shall be enjoyed without discrimination by reason of race, national origin, colour, religion or sex. These rights are the following: the right of the individual to life, liberty, security of the person and enjoyment of property and the right not to be deprived thereof except by due process of



law; the right of the individual to equality before the law and the protection of the law; freedom of religion; freedom of speech; freedom of assembly and association; and freedom of the press. Thus, in Canada, the courts would declare inoperative any "law of Canada" which abrogates, abridges or infringes upon any of the above-listed rights. They would also hold inoperative any "law of Canada" which recognizes any of these rights to everyone in Canada save a person or group of persons which can be identified on one of the above-mentioned prohibited grounds of discrimination.

In addition, certain discriminatory acts are expressly prohibited under federal legislation. For example, mention should be made of:

- a) the Canadian Human Rights Act, which forbids discrimination, on prohibited grounds, in employment or the provision of goods and services, including the provision of residential accommodation and commercial premises and which forbids the use of the telephone to spread hate messages against a person or persons identifiable on prohibited grounds of discrimination, when the telecommunication undertaking so used falls within the legislative authority of Parliament. For purposes of this Act, race, national or ethnic origin, colour, religion, age, sex, marital status, conviction for which a pardon has been granted and, in matters related to employment, physical handicap are prohibited grounds of discrimination (Canadian Human Rights Act, ss. 3-18; s. 20);
- b) the Public Service Employment Act, which states that the Public Service Commission shall not discriminate against any person by reason of sex, race, national origin, colour, religion, marital status or age (Public Service Employment Act, R.S.C. 1970, ch. P-32, s. 12(2));

- c) the Unemployment Insurance Act, 1971, under which the Canadian Employment and Immigration Commission shall, as part of its national employment service, ensure that in referring a worker seeking employment, there is no discrimination because of race, national origin, colour, religion, age, sex, marital status, physical handicap or political affiliation; however, for the purposes of this Act, limitations, specifications or preferences based upon bona fide occupational qualifications as well as positive action programs, are not considered discriminatory (Unemployment Insurance Act, 1971, S.C. 1970-71-72, ch. 48, s. 139(2)(b)).

Paragraph 3: By acceding to the Covenant, the Government of Canada also undertook to guarantee that any person whose rights and freedoms, as recognized in the Covenant, are infringed shall have a means of redress.

At the federal level, the recourse available to an individual whose rights under the Covenant have been infringed is based on domestic law. However, the nature of this recourse depends on the right in question. For example, someone who is detained illegally can demand that a writ of habeas corpus be issued or can lay an information under the Criminal Code against the persons who have held him illegally. Furthermore anyone whose freedom of speech is hampered by a federal statute could ask the courts to declare this statute inoperative under the Canadian Bill of Rights. Finally, when any right recognized in the Covenant and protected by the Canadian Human Rights Act is infringed, there exists an opportunity of laying a complaint before the Canadian Human Rights Commission or the Privacy Commissioner (ss. 32 and 58).

It should be noted that federal public servants, save express provision to the contrary, have no special immunity and are liable to criminal and civil proceedings for wrongful acts committed in the performance of their duties. In addition, because of the Crown Liability Act, the Crown is liable, in Quebec, for any delict or quasi-delict committed by one of its servants in the performance of his duties and, in the rest of Canada, for any tort committed by such a person in the course of his employment, and this in any case where a cause of action could have existed against that person (Crown Liability Act, R.S.C. 1970, ch. C-38, ss. 2 (servant), 3(1), 3(6) and 4(2)).

### Article 3

For several years now Canada has been working to abolish discrimination by reason of sex. In 1974 the Parliament of Canada passed the Statute Law (Status of Women) Amendment Act, 1974, S.C. 1974-75-76, ch. 66, which eliminated certain provisions of federal statutes which were discriminatory towards women. In 1976, by adopting the Citizenship Act, S.C. 1974-75-76, ch. 108, Parliament decreed that all children born abroad to a Canadian parent, after the coming into force of the Act, would be considered Canadian citizens by birth (s. 3(1)(b)). When this Act came into force on February 15, 1977, it ended a state of law which had existed since January 1, 1947. Under legislation existing before its coming into force, a child born abroad, except on a Canadian vessel, was a citizen by birth only if his father were a Canadian citizen or, if he was born out of wedlock, his mother were, at the time of the birth, a Canadian citizen, and if the birth had been registered according to law (Canadian Citizenship Act,



R.S.C. 1970, ch. C-19, s. 5(1)). Further, by enacting the new Citizenship Act, Parliament also ended the distinction between the wife of a Canadian citizen and the husband of a Canadian citizen when neither of these spouses was a Canadian citizen. Whereas formerly the wife of a Canadian citizen could acquire Canadian citizenship if she applied for it after having resided in Canada for at least twelve of the eighteen months immediately preceding the date of her application, now the spouse of a Canadian citizen of either sex must wait three years before becoming a citizen. The Parliament of Canada also passed, on July 14, 1977, the Canadian Human Rights Act, which prohibits any discrimination on the ground of sex in the provision of goods, services, facilities or accommodation customarily available to the general public, commercial premises and residential accommodation as well as in matters of employment. In this regard, the Act also recognizes the principle of equal wages for work of equal value (s. 3; ss. 5 to 18).

There is also a federal minister responsible for the status of women who is assisted by a co-ordinator responsible for promoting equality of status within the Public Service and in federal enactments.

#### Article 4

When a state of war, invasion or insurrection, real or apprehended, is proclaimed under s. 2 of the War Measures Act, R.S.C. 1970, ch. W-2, the Governor in Council may, under ss. 3, 4 and 6(5), exercise exceptional powers without having to heed the provisions of the Canadian Bill of Rights.

It is not contrary to the Covenant to adopt such a law. In fact, in time of a public emergency which threatens

the life of a nation and the existence of which has been officially proclaimed, Article 4 of the Covenant authorizes a State, subject to certain restrictions, to take measures derogating from its obligations under the Covenant to the extent strictly required by the exigencies of the situation.

Although no provision of the War Measures Act directly contravenes Article 4 of the Covenant, the powers that this Act confers upon the Governor in Council could permit him to take measures or adopt orders or regulations that would run counter to this Article. Notwithstanding that, Canada, by acceding to the Covenant, undertook vis-à-vis the international community to comply with its provisions, including those set forth in Article 4. It must therefore be assumed, in the absence of express assurances in the War Measures Act, that if ever a situation requiring the application of this Act should arise, Canada would fulfil the obligations it assumed under the Covenant.

#### Article 5

By acceding to the International Covenant on Civil and Political Rights, the Canadian government undertook not to destroy or limit the rights recognized in the Covenant and not to restrict or derogate from any right already recognized in Canada before it acceded to the Covenant on the pretext that the present Covenant does not recognize it, or recognizes it to a lesser extent.

The Government of Canada does not intend to change its philosophy regarding human rights. The protection of human rights, both those which are recognized in the Covenant and those which are not, such as the individual's right to the enjoyment of property and the right not to be deprived thereof

except by due process of law, was, and still is, one of the basic principles on which the Canadian nation is founded. Canada's accession to the International Covenant on Civil and Political Rights does not alter this state of fact and of law in the slightest.

This Article authorizes the Canadian government to take certain actions which could restrict the freedom of action of persons or groups of persons who advocate the limitation or destruction of the rights or freedoms recognized in the Covenant. For example, Parliament could adopt law prohibiting any propaganda aimed at the destruction or limitation of the rights recognized in the Covenant. However, except for certain statutory provisions, such as:

- a) ss. 281.1 to 281.3 of the Criminal Code, which prohibit hate messages directed against a group distinguishable by colour, race, religion or ethnic origin,
- b) s. 12 of the Canadian Human Rights Act which prohibits propaganda which, in respect of employment or the provision of goods and services, including the provision of residential accommodation and commercial premises, incites discrimination on prohibited grounds, such as race, national or ethnic origin, colour, religion, age, sex, marital status or conviction for which a pardon has been granted and, in matters related to employment, physical handicap, and
- c) s. 13 of the same Act, which prohibits the use of the telephone to spread hate messages against an identifiable group on prohibited grounds of discrimination when the telecommunication undertaking so used falls within the legislative authority of Parliament,

no such limitation of freedom of expression exists in federal



legislation. The federal government considers that the rights and freedoms recognized in the Covenant, and those which are not, are, in Canada, sufficiently protected against action aimed at destroying them.

#### Article 6

Paragraph 1: The right to life has been recognized and protected by the Parliament of Canada. In this regard, the preamble to the Canadian Bill of Rights states that the dignity and worth of the human person are two of the principles on which the Canadian nation is founded. Further, s. 1(a) of the Bill recognizes the right of every individual to life and the right not to be deprived thereof except by due process of law. Any law of Canada which abrogates, abridges or infringes this right would, under s. 2 of the Bill, be held by the courts as inoperative. Similarly, to protect human life, the Criminal Code prohibits and punishes actions which constitute a direct or indirect threat to life, such as,

- a) administering dangerous surgical or medical treatment that may endanger the life of an individual without reasonable knowledge, skill and care (s. 198);
- b) abandoning a child under the age of ten years so that its life is endangered (s. 200);
- c) for a master, causing bodily harm to an apprentice or servant so that his life is in danger or his health is likely to be permanently injured (s. 201(a));
- d) causing death by criminal negligence (s. 203; see also s. 202);
- e) murder, manslaughter, infanticide and causing the death, in the act of birth, of a child (ss. 212-221);
- f) counselling or aiding suicide (s. 224);

- g) for a women to neglect to obtain assistance in childbirth if this is done with the intent that the child die or that his birth be concealed where the child dies or suffers permanent injuries as a result of this conduct (s. 226);
- h) discharging a firearm or air gun with intent to wound, endanger the life or prevent the arrest or detention of any person (s. 228);
- i) administering poisons or noxious things (s. 229);
- j) being criminally negligent in the operation of a motor vehicle (s. 233 (1));
- k) leaving the scene of an accident when involved in an automobile accident and, in so doing, failing, among other things, to offer assistance to an injured person (s. 233(2));
- l) driving a motor vehicle in a public place in a manner dangerous to the public (s. 233(4));
- m) driving a motor vehicle, or having the care or control of it, while the ability to drive is impaired (s. 234(1));
- n) impeding an attempt to save a human life (s. 241);
- o) assaults (ss. 244-246);
- p) kidnapping and abduction (ss. 247-250);
- q) unauthorized abortion (s. 251); and
- r) supplying a drug, a noxious thing or an instrument knowing that it will be used to procure a miscarriage (s. 252); or advertising, offering or selling any means, drug or article intended to procure a miscarriage (ss. 252 and 159(2)(c)).

The enactment of criminal legislation does not result in the elimination of the anti-social or merely dangerous behaviour which it seeks to prohibit. This being the case,

most of the provinces and territories have set up programs aimed at compensating the victims of certain criminal acts involving an attack on the person of an individual. The federal Government promoted the setting up of such programs. This is why it set up a system of grants under which a participating province or territory is entitled to recover part of the costs it incurred in administering a compensation program.

In addition, the Canada Labour Code states that whoever operates or carries on a work, undertaking or business under the jurisdiction of Parliament, except a local or private undertaking in the Yukon or Northwest Territories or a government "departmental" corporation, shall do so in a manner that will not endanger the safety or health of any person employed thereupon or in connection therewith (Canada Labour Code, R.S.C. 1970, ch. L-1, s. 81 (1)). Moreover, as of September 1, 1978, the date on which s. 82.1 came into force, the Code permits any employee of such an undertaking to refuse to work by reason of imminent danger to his health or safety until the situation is corrected by the employer. If not corrected, the employee may ask an industrial safety officer to investigate the situation. If the officer decides in favour of the employee, the latter does not have to work under the conditions complained of. If the officer does not agree with the employee, the latter may appeal his decision to the Canada Labour Relations Board. However, while waiting for the Board to decide on his appeal, the employee cannot refuse to work simply because he considers his employment to be dangerous. The employer also has a right of appeal and can ask the Board to annul the officer's decision. However, until it does so, the officer's decision stands. Where an employee has



exercised the right which s. 82.1 grants him, he is entitled to his remuneration and may not be subjected to any threat or reprisal on the part of his employer (s. 97(1)(d), (2) and (3)).

In addition to the monies which it directly gives to individuals through programs such as family allowances and old age security (Family Allowances Act, 1973, S.C. 1973-74, ch. 44; Old Age Security Act, R.S.C. 1970, ch. 0-6), the Government of Canada subsidizes various provincial and territorial health and welfare programs throughout Canada. In this context, hospital and health insurance programs should be mentioned (Federal-Provincial Fiscal Arrangements and Established Programs Financing Act, 1977, S.C. 1976-77, ch. 10, ss. 17-33).

Paragraph 2: No execution has taken place in Canada since December 11, 1962. Furthermore, since the coming into force of the Criminal Law Amendment Act (No 2), 1976, S.C. 1974-75-76, ch. 105, on July 16, 1976, the death penalty has officially been abolished for all crimes except certain offences under the Code of Service Discipline (National Defence Act, R.S.C. 1970, ch. N-4, ss. 63 to 66; ss. 68 to 70; s. 95; see also s. 55).

Paragraph 3: Canada acceded to the Convention on the Prevention and Punishment of the Crime of Genocide and the Criminal Code implements the provisions of this convention. In this connection should be cited the sections of the Criminal Code prohibiting murder (ss. 212, 214 and 218), common assault and causing bodily harm (s. 245), kidnapping (s. 247(1)) and abduction of a child under fourteen (s. 250).

Paragraphs 4 and 5: As regards persons subject to the Code of Service Discipline (National Defence Act, R.S.C.

1970, ch. N-4, s. 55; Geneva Conventions Act, R.S.C. 1970, ch. G-3, s. 7) and condemned to death thereunder, there is no provision in the National Defence Act, or in the regulations adopted under this Act, which prohibits the execution of a person under eighteen years of age or a pregnant woman. However, under s. 178(1) of the National Defence Act, "a punishment of death imposed by a court martial is subject to approval by the Governor in Council" and cannot be carried out without this consent. Since the Governor in Council is fully aware of the obligations which Canada has contracted under this Covenant, it is unlikely that a person under eighteen years of age, or a pregnant woman would be executed for an offence against the Code of Service Discipline. Finally, in order to be carried out, all death sentences must be executed pursuant to regulations adopted by the Governor in Council under s. 175 of the National Defence Act. No such regulations exist at the moment, although the Governor in Council may enact such regulations at any time should this be required.

Every person condemned to death for an offence against the Code of Service Discipline is entitled to petition the Minister of National Defence under s. 183 of the National Defence Act to mitigate, commute or remit the punishment imposed by a service tribunal. In addition, such a person can request the Governor General for an absolute or conditional pardon (commutation of penalty) if the Minister of National Defence refuses to intervene in his behalf. Under s. XII of the Letters Patent Constituting the Office of Governor General of Canada, 1947, the Governor General may, on the advice of the Cabinet, grant him such pardon.

#### Article 7

In Canada, torture and the imposition of cruel,

inhuman or degrading punishment or treatment are practices contrary to the philosophy of Canadian criminal law. The main sanctions recognized in Canadian criminal law are imprisonment and fines. The death penalty has been abolished for all crimes except certain offences against the Code of Service Discipline; similarly, whipping which could be imposed as an additional penalty for certain crimes, has also been abolished. Furthermore, the Criminal Code prohibits the use of torture and cruel, inhuman or degrading treatment affecting the body or mind of an individual. Such practices are prohibited under ss. 245 (assault with or without bodily harm; causing bodily harm), 228 (causing bodily harm with intent to wound a person or to endanger his life), 229 (administering a noxious thing), 305 (extortion) and 381 (intimidation) of the Criminal Code.

Such practices are also contrary to the principles governing the administration of the Royal Canadian Mounted Police and the Canadian Penitentiary Service. Thus, in addition to any criminal penalties, any member of the Royal Canadian Mounted Police who is cruel, harsh or unnecessarily violent to any prisoner, or other person, is guilty of a major service offence and is liable to punishment ranging from a simple reprimand to imprisonment for a term not exceeding one year (Royal Canadian Mounted Police Act, R.S.C. 1970, ch. R-9, ss. 25(1) and 36(1)). Similarly, any public servant or employee of the Canadian Penitentiary Service who tortures prisoners or uses cruel, inhuman or degrading treatment on them is subject to disciplinary action ranging from a reprimand to dismissal, in addition to the criminal penalties to which he may be liable, because these practices are contrary to the obligation of safe custody of prisoners which governs



the operations of the Canadian Penitentiary Service (Penitentiary Service Regulations, SOR/62-90, s. 2.27; Code of Discipline of the Canadian Penitentiary Service established under s. 106 of the Public Service Terms and Conditions of Employment Regulations, SOR/67-118).

Furthermore, pursuant to s. 2(b) of the Canadian Bill of Rights, any law of Canada which imposes or authorizes the imposition of cruel and unusual treatment or punishment would be held by the courts as inoperative. Thus, any legislative provision imposing or authorizing the imposition of treatment or punishment which a court considers cruel and unusual would be inoperative.

In conclusion, no person held in penitentiaries under the jurisdiction of Parliament is subjected to any medical or scientific experiment. Anyone carrying out such an experiment on a person without the latter's consent would be subject, at the very least, to being charged under s. 245 of the Criminal Code with common assault, or having caused bodily harm.

#### Article 8

Paragraph 1: Slavery and the slave trade do not exist in Canada. Any person kidnapping an individual in order to subjugate him, sell him, or otherwise dispose of him as a slave would be committing an indictable offence and could be charged, under s. 247(1) of the Criminal Code, with kidnapping, an offence which renders him liable to imprisonment for life. Furthermore, if a person hijacks an aircraft in order to commit this crime, he is liable to imprisonment for life under s. 76.1 of the Code. Likewise, if a person acquires as a slave an individual who has been kidnapped by another, he could be accused of forcible confinement and, pursuant to

s. 247(2) of the Criminal Code, could be liable to imprisonment for five years.

Paragraph 2: Servitude is non-existent in Canada. Anyone holding a person against his will in order to maintain him in a state of servitude could be charged with forcible confinement pursuant to s. 247(2) of the Criminal Code.

Paragraph 3: There is no provision in any federal Act authorizing forced or compulsory employment of the nature precluded under this paragraph. In fact, in Canada, an employee is free to chose his employer. A person who holds an individual against his will to force him to do labour may be charged with forcible confinement, and, under certain circumstances, with kidnapping under s. 247 of the Criminal Code. However, it should be pointed out that freedom of choice in matters of employment does not authorize the commission of illegal acts. Thus, this right cannot be invoked against the provisions of s. 380 of the Criminal Code which prohibits, with the exception of legal work stoppages within the context of industrial disputes, any stoppage of work resulting from breaking a contract if the probable consequences of the work stoppage would be to endanger human life, cause serious bodily harm, expose valuable property to serious injury, deprive the inhabitants of a city or place, or part thereof, wholly or to a great extent, of their supply of light, power, gas or water, or delay or prevent the operations of a rail carrier.

#### Article 9

Paragraph 1: Section 1(a) of the Canadian Bill of Rights recognizes the right of every individual in Canada, whatever his race, national origin, colour, religion or sex,

to liberty and security of the person, and the right not to be deprived thereof except by due process of law. Furthermore, pursuant to s. 2(a) of the Bill, any law authorizing or effecting the arbitrary detention or imprisonment of any person would be inoperative.

Paragraph 2: This paragraph recognizes that any person who has been arrested has two rights: first, the right to be informed, at the time of the arrest, of the reasons for his arrest; and second, the right to be promptly informed of any charges against him.

a) Right to be informed, at the time of the arrest, of the reasons for the arrest

For matters within its jurisdiction, Parliament has recognized to every individual the right to be informed at the time of his arrest of the reasons for the arrest. This right is found in s. 29 and, subsidiarily, in s. 728(2) of the Criminal Code.

Section 29(2) states that every person who has been arrested must, where it is feasible, be informed, immediately after being arrested, of the warrant under which he has been arrested or, if he has been arrested without a warrant, of the reason for the arrest. Pursuant to s. 29(1), every peace officer who, when making an arrest under a warrant, has the said warrant in his possession must show it to the person he is arresting when requested. Section 728(2) of the Criminal Code goes further: if, in a summary conviction proceeding, a warrant rather than a summons is issued after an information was laid against the accused, the officer making the arrest is required, at the time of the arrest, to serve a copy of the warrant on the person being arrested.



In Gamracy v The Queen, (1974) S.C.R. 640, at pp. 643 and 644, the Supreme Court of Canada held that a peace officer who arrests someone without a warrant fully complies with the requirements of s. 29(2) if he informs the person that he is being arrested under a warrant in force in the territorial jurisdiction within which the arrestee is found. The Court went even farther and stated that it was not part of the officer's duty to obtain the warrant to show the accused, or to ascertain its contents. This being the law in Canada, it can be asked whether a peace officer who arrests an individual after having advised him that he is being arrested under a warrant, informs that person of the reasons of his arrest as he is required to do under the Covenant if he does not disclose the content of the warrant. If the information provided by the officer in the Gamracy decision is sufficient in the context of the Covenant, Canadian law is consistent with the Covenant; if the information is not sufficient, there will be a conflict between the Covenant and Canadian law. However, until the contrary is demonstrated, it must be presumed that Canadian law is consistent with the first part of Article 9(2) of the Covenant.

In conclusion, when an arrest is made, be it made by a peace officer or not, the fact that the person making the arrest has not complied with the provisions of ss. 29 and 728(2) does not invalidate the arrest, or in any way affect the competence of the courts to hear the case. However, the unlawfulness of the arrest may allow the accused to lay an information for unlawful arrest and imprisonment under s. 247(2) of the Criminal Code, or to sue for damages, under the law of a province or territory, the person who arrested him. However, if the person who made this arrest was authorized by law to make it and if he acted with reasonable or probable

grounds, or, again if this person executed a court process such as an arrest warrant, he can avail himself of the immunity from civil and criminal prosecutions which s. 25 of the Criminal Code grants in such cases if he complied with the law when making the arrest.

When an arrest is made under a warrant lawfully executed, the arrested person cannot charge the individual who arrested him with illegal arrest, nor can he sue this person in tort. Nevertheless, if the arrest results from an unjustified or malicious complaint, he can charge the person who made the complaint with either obstructing justice, or public mischief according to the circumstances of the case (Criminal Code, ss. 127 and 128). He may also, if provincial or territorial law allows, sue this person in tort.

b) Right of an individual to be promptly informed of any charge against him

Under federal law, every person who appears before a justice shall at that time be officially informed of the charges made against him (Criminal Code, ss. 463 and 736(1)). However, in practice, such a person normally is informed of the charges made against him before he appears before a justice. Consequently, the only persons required to wait until appearing before a justice in order to be officially informed of the charges against them are:

- i) persons arrested without a warrant who are not released within twenty-four hours of their arrest (Criminal Code, s. 454(1));
- ii) persons arrested without a warrant who have been released pursuant to an appearance notice, promise to appear, or recognizance, not subsequently revoked, when the charges made against them in the information are different from

those described in the appearance notice, promise to appear, or recognizance entered into by the person concerned (Criminal Code, ss. 455.1, 455.4(1) and 456.1(1)).

It should also be pointed out that when there is a preliminary inquiry, the presiding magistrate may commit the accused for trial on the charge stated in the information, or on any other charge revealed by the evidence, or on the charge stated in the information and on any other charge revealed by the evidence (Criminal Code, s. 475(1)(a)).

Paragraph 3: This paragraph recognizes the right of anyone arrested or detained on a criminal charge to be brought promptly before a judge or other officer authorized by law to exercise judicial power, and the right to be tried within a reasonable time or, failing that, to be released while waiting to stand trial. It also recognizes that the detention in custody of persons awaiting trial should be not the rule but, rather, the exception.

a) Right to be brought promptly before a judge

In Canada, anyone against whom an information has been laid and accepted by a justice must appear before a justice (Criminal Code, ss. 463 and 736(1)). As a rule, a person is not arrested before his appearance. Rather, after an information is laid and accepted by a justice of the peace, the justice shall issue a summons compelling the accused to appear to answer the charge. This summons is directed to the accused and requires him to attend court at the time therein stated (art. 455.3(1) and (4) and 455.5). However, in certain instances, an individual can be arrested either with or without a warrant. In such cases, unless the person arrested has been released, the accused must be taken before a justice



within twenty-four hours of being arrested by a peace officer or delivered to a peace officer if he was arrested by someone who is not a peace officer or, where a justice is not available within a period of twenty-four hours after the person has been arrested or delivered, as soon as possible (Criminal Code, s. 454(1)). If, however, a peace officer or an officer in charge does not detain a person who has been arrested, but releases him under an appearance notice, a promise to appear, or a recognizance, that person will have to appear only on the date stated on the document in question (Criminal Code, ss. 452, 453 and 453.1). Where a peace officer, or officer in charge, releases a person under an appearance notice, a promise to appear or a recognizance, he is not required to have him appear within a specific time.

- b) Right to stand trial within a reasonable time or, failing that, to be released while waiting to stand trial

There is no legislative provision in federal law which recognizes a person's right to trial within a reasonable time or, failing that, to be released while waiting to stand trial. Generally speaking, accused persons are, in Canada, released pending their trial. However, in those cases where they are not released, s. 459 of the Criminal Code states that any person who has been charged with an offence (other than offences mentioned in s. 457.7, for example murder, sabotage, incitement to mutiny, an offence against an aircraft) and

- i) who, prosecuted by way of indictment, is still in custody ninety days following his appearance or following the revocation under ss. 457.6 and 458 of the Code of a release order, appearance notice, promise to appear or recognizance, or

ii) who, prosecuted by way of summary conviction, is still in custody thirty days following his appearance or following the revocation under ss. 457.6 and 458 of the Code of a release order, appearance notice, promise to appear or recognizance,

must, if his trial has not begun by the end of this period, be taken by the person having custody of him before a judge mentioned in s. 448 in order to determine whether he should be released. This applies in all cases in which a person is not required to be detained for another matter. The judge decides at that time whether detention of the accused is justified. If he considers that detention is unjustified, he must release the accused from custody upon the conditions he deems proper in the circumstances. Where an accused has been brought before a judge under s. 459, the judge may give such instructions as he thinks necessary for expediting the trial of the accused. However, s. 459 cannot be used to secure the release of persons being detained because they are incapable of complying with the conditions listed in a release order (Ex parte Srebot, (1975) 28 C.C.C. (2d) 160).

c) Right of an accused to be released pending trial

The provisions of the Criminal Code governing release from custody before trial or pending trial (ss. 451 to 453.4; ss. 457 to 459; s. 608.1) and those governing release pending determination of an appeal (s. 608; ss. 752, 763 and 771(2)) meet the requirements of this paragraph.

Paragraph 4: Section 2(c)(iii) of the Canadian Bill of Rights renders inoperative any law of Canada depriving a person of the remedy by way of habeas corpus. In criminal

matters, s. 708 of the Criminal Code states that anyone deprived of his freedom may, subject to the restrictions found in ss. 709, 716 and 719 of the Code, apply for a writ of habeas corpus. However, there is an exception to this rule. Under s. 459.1, the remedy by way of habeas corpus cannot be used for the purpose of obtaining an order relating to interim release before trial or pending the determination of an appeal, or for the purpose of reviewing or varying any decision relating to interim release, or the refusal thereof. Nevertheless, the courts have held that, with respect to the persons to whom s. 459 applies (see supra, paragraph 3(b)), this restriction is inoperative since it was contrary to s. 2(c)(iii) of the Canadian Bill of Rights (Ex parte Mitchell, (1975) 23 C.C.C. (2d) 473; Ex parte Srebot, (1975) 28 C.C.C. (2d) 160). A person unlawfully detained may, therefore, apply for his release by way of habeas corpus. A judge may grant his application or, again, he may, under s. 709, make an order for the further detention of that person and instruct that his trial be expedited. It should also be noted that s. 709 has been challenged as being contrary to s. 2(c)(iii) of the Canadian Bill of Rights. However, there is no consensus of judicial opinion on this point: Ex parte Amos, (1975) 24 C.C.C. (2d) 552 holds that this section contravenes the Bill while Ex parte Gooden, (1975) 27 C.C.C. (2d) 161) considers that it does not.

Paragraph 5: As previously mentioned, the right of a person who is illegally arrested, or who is legally arrested as the result of an unjustified or malicious complaint, to sue for damages the person who illegally arrested him or who made an unjustified or malicious complaint rests on provincial or territorial law.



If a person is unlawfully arrested or detained by a servant of the Crown in right of Canada, for example, a member of the Royal Canadian Mounted Police, he may bring, under provincial or territorial law, an action against the Crown for damages as authorized by the Crown Liability Act, R.S.C. 1970, ch. C-38. However, it should be noted that if a person is unlawfully detained under the Criminal Code, or any other federal criminal statute, by a police officer employed by a municipality or province, no proceedings lie against the Crown in right of Canada under the Crown Liability Act since, when a police officer is acting as a peace officer, he is not a servant of Her Majesty in right of Canada (Schulze v The Queen, (1974) 1 F.C. 233).

#### Article 10

In Canada, jurisdiction over correctional institutions is shared between Parliament and the provincial legislatures. Under s. 91(28) of the British North America Act, 1867, 30 & 31 Vict., ch. 3 (U.K.) and s. 4 of the British North America Act, 1871, 34 & 35 Vict., ch 28 (U.K.), Parliament has jurisdiction over the establishment, maintenance and management of penitentiaries and, in the territories, over prisons and reformatories. It has, however, delegated the exercise of the last power to the territorial governments (Northwest Territories Act, R.S.C. 1970, ch N-22, ss. 13(j) and (x) and 44; Yukon Act, R.S.C. 1970, ch. Y-2, as 16(j) and (x) and 44). As for the provinces, s. 92(6) of the British North America Act, 1867 grants them jurisdiction with respect to the establishment, maintenance and management of prisons and reformatories. In practice, this division gives Parliament jurisdiction over all persons, including young offenders, sentenced by the ordinary criminal courts to punishment

of two years or more. The provinces and territories have jurisdiction over penal institutions in which persons awaiting trial are detained and over prisons in which persons sentenced to less than two years' imprisonment are held. They also have jurisdiction over young offenders who are placed in provincial and territorial institutions, either because they were sentenced by the ordinary criminal courts to less than two years imprisonment, or because they were convicted under the Juvenile Delinquents Act, R.S.C. 1970, ch. J-3, and imprisoned in a provincial institution. It should, however, be noted that while the Juvenile Delinquents Act applies throughout most of Canada, it does not apply in Newfoundland since its application has never been extended to that province as required by the terms of the Union between Canada and Newfoundland. In that province, juveniles are dealt under the Juveniles Act, R.S.N. 1970, ch. 190.

Paragraph 1: In Canada, every person who is detained, either because he is awaiting trial, or because he is sentenced to a prison term is protected by the provisions of the Criminal Code. He cannot be subjected to maltreatment or threats. Anyone who mistreats or threatens a person being detained is liable, under federal law, not only to criminal prosecution under ss. 245 (assault with or without bodily harm; causing bodily harm), 228 (causing bodily harm with intent to wound a person or endanger his life), 229 (administering a noxious thing), 305 (extortion) and 381 (intimidation) of the Criminal Code, but also to administrative sanctions if he is an employee of the Government of Canada.

Ordinarily, persons are detained because they are awaiting trial, or because they have been sentenced to a

prison term following a trial. In Canada, persons sentenced to less than two years imprisonment for a breach of a federal enactment are usually held in provincial or territorial prisons. Though Parliament conferred upon the Lieutenant Governor of a province or the Commissioner of a territory the power to make regulations respecting the custody, treatment, discipline, training and employment of these prisoners, it expressly provided that such regulations could not authorize the imposition of corporal punishment or the hiring of a prisoner's labour to a private contractor without his consent (Prisons and Reformatories Act, R.S.C. 1970, ch. P-21, ss. 2 (prisoner) and 11). As for persons sentenced to two years imprisonment or more, they are normally detained in penitentiaries administered by the Canadian Penitentiary Service.

One of the fundamental objectives of the penitentiary system administered by the federal government is the treatment of prisoners in order to promote their social rehabilitation (Penitentiary Act, R.S.C. 1970, ch. P-6, s. 2(1) (penitentiary)). In order to achieve this, persons detained in penitentiaries are treated with humanity and with respect for the inherent dignity of the human person. To this end, the Penitentiary Service Regulations, SOR/62-90, ensure that detention conditions comply with this principle. Penitentiaries must provide for the physical and material needs of the inmates (food, clothing and bedding, s. 2.05; medical and dental care, s. 2.06; personal hygiene, s. 2.07; exercise, s. 2.09) and to the employment of their time (work, ss. 2.25 and 2.26; vocational training programs and recreational activities, ss. 2.10 and 2.19; hobbies, s. 2.20; and academic or vocational training to facilitate their rehabilitation, ss. 2.10 and 2.25). Inmates also have



the right to correspond with people outside the penitentiary and to receive visitors (s. 2.17). However, it should be pointed out that censorship of inmates' correspondence and supervision of visiting is a common practice considered necessary for the security of penitentiaries and, secondarily, for the process of inmate reformation and rehabilitation (s. 2.18). The Penitentiary Service Regulations also provide that inmates be placed under safe custody (s. 2.27; see also s. 2.30: dissociation) and that an inmate be punished only if he is found guilty of a disciplinary offence mentioned in the inmates' Code of Discipline (ss. 2.28 and 2.29).

In the penitentiaries administered by the Canadian Penitentiary Service, the aim of the disciplinary system is to facilitate the smooth operation of the penitentiary system by substituting for a behaviour that is unacceptable in the prison context one that is acceptable (Commissioner's Directive No 213 on guidelines for inmate discipline dated May 1, 1974, s. 4). As a general rule, intermediate-level officers can impose punishment for minor disciplinary offences: these punishments consist of the loss of one or more privileges, such as access to television and radio, participation in recreational activities, arts and crafts, and access to the library and the canteen (Penitentiary Service Regulations, s. 2.28(3); Commissioner's Directive No 213, ss. 5(b) and 9). Inmates who are charged with serious disciplinary offences are, if possible, brought before the institution's disciplinary board within the three working days following the offence, and their cases should be settled promptly, even though this may sometimes prove difficult. This board is composed of a chairman, to whom the director of an institution may add two staff members who have only an advisory role, since the decision-making

power lies in the hands of the chairman. He alone is empowered to decide whether or not the accused is guilty following a hearing at which the accused must be present. If he finds the accused guilty, he can impose, where appropriate, a punishment that can range from loss of a privilege to forfeiture of remission and can include solitary confinement for a period not exceeding thirty days (Penitentiary Service Regulations, s. 2.28(4); Commissioner's Directive No. 213, ss. 8, 14 and 15).(1) In a report tabled in the House of Commons on June 7, 1977, the Sub-Committee (of the Standing Committee on Justice and Legal Affairs) on the Canadian Penitentiary System criticized the system under which the chairman of a disciplinary board was a person appointed by the director of a penitentiary having the rank of assistant director or an equivalent or higher rank, because this system had given rise to accusations of bias by the inmates. The sub-committee therefore recommended the adoption of a system of independent chairmen under which a disciplinary board would be headed by a person from the community who was independent of the Canadian Penitentiary Service. The Government of Canada decided to implement this recommendation after studying it. As a first step, independent chairmen, selected from among the members of the legal profession, have been appointed in each of the maximum security establishments administered by the Service. Soon, such appointments will also be made in the other federal penitentiaries. This change will no doubt make it possible to ensure greater respect for the impartiality rule and assuage the feeling of distrust respecting the disciplinary boards amongst the inmates.

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(1) Though s. 2.28(4) of the Penitentiary Service Regulations and s. 8 of the Commissioner's Directive No. 213 provide that a penalty may include the replacement of normal food rations by special rations, the Commissioner of the Canadian Penitentiary Service has ordered that no penalty shall include a variance in rations.

To facilitate communication between inmates and penitentiary authorities, and, if possible, to facilitate the resolution of inmates' complaints, the Regulations state that "it is the duty of the institutional head to provide a reasonable opportunity for an interview at the request of any inmate who wishes to be heard". In addition, "it is the duty of the Commissioner, when visiting the institution, to provide a reasonable opportunity for an interview at the request of an inmate who appears to have a legitimate ground of complaint or who it appears might be assisted as a result of such an interview" (s. 2.12).

One of the purposes of interviews of this type is to resolve inmates' complaints at their source. If this proves impossible, an inmate who feels he has a grievance with respect to any matter related to his imprisonment and coming under the jurisdiction of the Commissioner of Penitentiaries (with the exception of a grievance that results in, or could result in, an action for damages against the Crown) may seek corrective action, by making an oral complaint to his immediate supervisor, and, if this does not produce a satisfactory result, by submitting a written grievance to the director of his institution. If he is not satisfied with the director's decision, he may appeal to the regional director and, finally, to the Commissioner of Penitentiaries (Penitentiary Service, Commissioner's Directive No. 241 on Inmate Grievances dated September 24, 1974, ss. 5, 6 and 11). If he is still not satisfied, an inmate can take his case to the courts. However, it should be noted that in its Report to the House of Commons tabled on June 7, 1977, the Sub-Committee on the Penitentiary System in Canada criticized the courts' insensitivity to inmates' problems:

"412. A fundamental problem lies in the general restraint by the courts in exercising their power to ensure that Canadian law applies within as well as outside penitentiaries. Most,



although not all, things that occur in a penitentiary with respect to the treatment and management of inmates - and much that concerns staff for that matter - have been classified by the courts as 'administrative' rather than 'legal' decision-making.

413. In the normal course of exercising government functions, a great many decision-making powers have been created by Parliament and conceded by the courts to be matters of 'administrative policy' not 'law'. The control over the potential abuse of such administrative powers is consigned to the political rather than the legal process."

As a result of this insensitivity, inmates often take their cases to the courts, not in the hope of solving their problems, but rather to make the public aware that such problems exist and, in this way, short-circuit the normal administrative process.

In order to protect further the rights of prisoners, the government created the position of Correctional Investigator on June 5, 1973. The Investigator, who is appointed under Part II of the Inquiries Act, R.S.C. 1970, ch. I-13, may, on his own initiative or further to complaints received from persons in custody or submitted on their behalf, investigate their problems and report his findings to the Solicitor General of Canada. Also, in response to the submission to the House of the Report of the Sub-Committee on the Penitentiary System in Canada, the government stated that certain reforms would be made to the Canadian penitentiary system in order further to protect the rights of prisoners and to ensure a higher level of competence among the security staff in penitentiaries.

In addition, Parliament recently passed the Transfer of Offenders Act, S.C. 1977-78, ch. 9. Under this Act, any

Canadian citizen who has been convicted of an offence in a foreign state with which Canada has entered into a treaty on the transfer of offenders, and who is being held in a prison in that state or has been released under any form of supervision without confinement, will be able to request that he be returned to Canada to serve his sentence if the authorities of the state in question accept such a transfer (s.6). When a foreign state agrees to transfer a Canadian offender back to Canada, it must advise the Solicitor General of this request (s.6). If the responsible authorities - the Solicitor General of Canada, in cases where the offender was sentenced to two or more years imprisonment, or the Solicitor General and the provincial or territorial prison authorities in the province or territory in which the offender would be detained, if he was sentenced to less than two years imprisonment - accept the transfer, he is to be returned to Canada (s. 6). Once transferred to Canada, an offender, though convicted and sentenced by a foreign court for a crime committed abroad, is deemed to have been found guilty and sentenced, without any right of appeal or review, by a Canadian court as if for an offence committed in Canada. He is to be subject, as far as possible, to the same rules as other prisoners in matters pertaining to detention and release from prison (ss. 4-5; ss. 7-17). Although a transferee no longer comes under the jurisdiction of the foreign state in which he was convicted, he will be able to enjoy in Canada the benefits of any pardon granted by that state (s. 18).

As for a foreign offender convicted of an offence against a law of Parliament, he can also, under the Transfer of Offenders Act, request a transfer to the state of which he is a citizen provided Canada has entered into a treaty for transfer of offenders with this state (s. 19). If the request

is accepted, in Canada, by the Solicitor General of Canada or, in cases where the offender is being detained in a provincial or territorial prison, by the Solicitor General with the agreement of the provincial or territorial prison authorities, and, in the host state, by the responsible authorities, the offender may be turned over to the responsible authorities in that state (ss. 19, 20 and 21).

In conclusion, it should be mentioned that, at present, Canada has entered into transfer treaties only with the United States and Mexico. However, if conditions prove favourable, such treaties could be entered into with other countries at a later time (s. 23 and Schedule).

Paragraph 2: It is the policy of the Government of Canada to foster the release of persons awaiting trial. There are a number of provisions in the Criminal Code to this effect: ss. 453 to 453.4; ss. 457 to 459; ss. 608 to 608.1; and ss. 752, 763 and 771(2). However, with the exception of juvenile delinquents, Parliament has not legislated on the pre-trial detention conditions of persons accused of contravening a criminal law. In other words, the provinces and territories are responsible for the detention conditions of such persons.

With respect to children to whom the Juvenile Delinquents Act applies, the practice is that every child who has not been released pending trial is to be detained in a detention home or shelter used exclusively for children. However, even in those cases where they may be detained in a prison, children must be kept in custody separate from older persons charged with criminal offences, and separate from all persons undergoing sentence of imprisonment (Juvenile Delinquents Act, R.S.C. 1970, ch. J-3, ss. 13, 14 and 15; Prisons and Reformatories Act, R.S.C. 1970, ch. P-21, s. 10). The same practice



applies with respect to children sixteen years old or younger whom a court for juvenile delinquents has referred to the ordinary criminal courts (Prisons and Reformatories Act, s. 10).

Paragraph 3: Under this paragraph any state operating a prison system must seek the rehabilitation of all detainees, whether these persons are adults or minors. Before examining what is being done in the federal penitentiaries to rehabilitate the persons therein detained, comments should be made about the detention of juvenile delinquents.

In order to provide for the treatment of children who have contravened a federal, provincial or territorial statute, Parliament passed the Juvenile Delinquents Act, R.S.C. 1970, ch. J-3.<sup>(1)</sup> The aim of this Act is to ensure that the care, custody and discipline of a young delinquent approximates, as nearly as possible, that which should be given by his parents, and that, as far as practicable, every juvenile delinquent is treated, not as a criminal, but as a misdirected and misguided child, needing aid, encouragement, help and assistance (s. 38). No child convicted under this Act by a juvenile court can be sentenced to or incarcerated in a penitentiary, prison, police station, or other penal institution in which adults are or may be imprisoned (s. 26). Hence, if a child is adjudged to be a juvenile delinquent pursuant to the Juvenile Delinquents Act, and if his detention is considered necessary by a juvenile court, he is to be committed to an industrial school (s.20(1)(i)). The industrial schools, whose function it is to rehabilitate juvenile delinquents placed in their care, are under provincial jurisdiction. If the provincial authorities

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(1) For further details regarding this Act, see infra, Article 14, paragraph 4.

that administer these institutions feel that a child is unsuitable for the training therein provided and, consequently, cannot be rehabilitated there, they may ask that he be transferred to a federal penitentiary. The Penitentiary Act, R.S.C. 1970, ch. P-6, authorizes, under certain conditions, the transfer of such a child to a federal institution for the separate confinement of young offenders (s. 21(3)). Or again, in cases where a juvenile court has retained the jurisdiction it had over a child it committed to the custody of an industrial school, the provincial authorities may ask that court, if the child in question is over the age of fourteen and had committed an act which is an indictable offence, to have the child brought back before it so that he can be taken before the ordinary courts. If the court grants this request, the young offender is to be brought before the ordinary courts and tried, on indictment, for the offence for which the juvenile court had earlier convicted him (Juvenile Delinquents Act, ss. 20(3) and (4) and 21). On the other hand, if they feel that the circumstances justify such action, the provincial authorities may ask a juvenile court to reduce the sentence imposed upon a child (s. 20(3)).

In certain cases, a child may come under the jurisdiction of the ordinary criminal courts (Juvenile Delinquents Act, ss. 9 and 20(3)). In this respect, the Penitentiary Act states that where facilities exist for the separate confinement of young offenders within a region of Canada, no person under the age of sixteen shall, within that region, be confined in association with persons who are twenty-one years of age or more unless the Commissioner decides otherwise (s. 21(1)). Likewise, if there is a provincial institution in that region for the custody and training of persons under the

age of twenty-one years, the Commissioner may authorize the transfer of a child to such an institution (s. 21(2)).

With respect to persons dealt with by the ordinary criminal courts across Canada, both at the federal level and in the provinces and territories, one of the objectives of the penal system is the social rehabilitation of inmates. Federally, the Penitentiary Act, R.S.C. 1970, ch. P-6, states clearly that this is one of the objectives of the Canadian penitentiary system (s. 2(1) (penitentiary)). To achieve this objective, each institution prepares a suitable activities program designed, as far as possible, to render inmates capable of assuming their responsibilities as citizens and of abiding by the law on their release. A program of this type means that the Commissioner of Penitentiaries "shall, so far as practicable, make available to each inmate who is capable of benefiting therefrom, academic or vocational training, instructive and productive work, religious and recreational activities and psychiatric, psychological and social counselling" (Penitentiary Service Regulations, SOR/1962-90, ss. 2.10 (1) and (2)). In this connection we should mention that the Canadian Penitentiary Service encourages the setting up of programs based on community participation. The aim of these programs is "to broaden contacts between inmates and society by establishing relationships which will assist them through social exchange and integration by volunteer programs of social and cultural activities" (Commissioner's Directive No. 230 on community relationships dated March 14, 1973, s. 2(a)). The success of these programs is dependent upon citizen participation and, in particular, upon the setting up in each penitentiary of a citizen advisory committee. In addition, such a committee can work with the director of a penitentiary



and his staff on the development and improvement of the institutional programs as a whole and help these persons to provide and improve the means of open communication with the staff members, inmates, media and general public (Divisional Instruction No 845 on community relationships dated March 14, 1973, ss. 5 and 11). In addition, in order to assist in his rehabilitation, an inmate may be given a temporary absence for a period not exceeding fifteen days, with or without escort (Penitentiary Act, s. 26 et seq.).<sup>(1)</sup> However, if the inmate is a person who has been sentenced to imprisonment for life without eligibility for parole for a specified number of years, he may not, until the expiration of all but three years of this period, be given an absence without escort or an absence with escort for rehabilitative reasons unless, in the latter case, the absence has been authorized by the Parole Board (Criminal Code, s. 674(2)).

The Government of Canada is also of the view that imprisonment is not always the most useful method of rehabilitation. Thus, Parliament has passed legislation to eliminate the term of detention, or reduce its length. For this purpose it has set up for persons who have been convicted of infringing a federal statute a system which provides for:

- a) the absolute discharge of a person convicted of an offence that does not carry a minimum sentence, or make

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(1) A person convicted of having contravened a federal enactment, other than a child within the meanings of the Juvenile Delinquents Act, and held in a provincial or territorial prison may also be given a temporary leave of absence, with or without escort, for a period not exceeding fifteen days (Prisons and Reformatories Act, R.S.C. 1970, ch. P-21, ss. 2(prisoner) and 8).

him liable to a sentence of fourteen years or over where the Court considers that this is in the best interests of the accused and is not against the public interest. However, if the Court feels that an absolute discharge is not justified, it can order that the accused be released upon the conditions prescribed in a probation order. When a court orders a person to be discharged absolutely or conditionally, the person thus discharged is deemed never to have been convicted of the act with which he was charged. In addition to absolute and conditional discharge orders, Parliament also limits the frequency or length of incarceration by allowing the courts to issue probation orders. Thus, where an accused is convicted of an offence, a court may, having regard to the age and character of the accused, the nature of the offence and the circumstances surrounding its commission, suspend, in the case of an offence other than one for which a minimum punishment is prescribed by law, the passing of sentence and direct that the accused be released upon the conditions in a probation order, or direct, when it imposes on the accused a fine or sentences him to imprisonment, whether for default of payment of a fine or otherwise, for a term not exceeding two years, that he comply with the provisions of a probation order. In the latter case, a court which imposes a prison term not exceeding ninety days, can direct that the sentence be served intermittently and that the accused comply with the conditions prescribed in a probation order when not in confinement (ss. 662-667);

- b) statutory or earned remission (Penitentiary Act, R.S.C. 1970, ch. P-6, ss. 22-24.2; Prisons and Reformatories Act, R.S.C. 1970, ch. P-21, ss. 5-7);
- c) parole, including day parole (Parole Act, R.S.C. 1970, ch. P-2, ss. 10, 13, 16, 18 and 20). A person who has been sentenced to imprisonment for life without eligibility for parole for a specified number of years may not be granted parole until the expiration of this specified number of years; nor may he be granted day parole until the expiration of all but three years of his number of years of imprisonment without eligibility for parole (Criminal Code, s. 674).

Release or reduction of sentence granted under these provisions is conditional upon compliance with certain conditions. This promotes good behaviour among the inmates since the latter would not wish their conditional discharges, probation orders, or parole, to be revoked, or to lose their days of remission, thereby increasing their term of detention. All persons discharged in accordance with a probation order or on parole under the Parole Act are placed under supervision in order to ensure that they comply with the conditions governing their release.

Another method that can be used to rehabilitate an individual who has been convicted of having infringed a law of Canada is the granting of a free or a conditional pardon. Such a pardon is granted by the Governor General under the royal prerogative (Letters Patent constituting the office of Governor General, 1947, R.S.C. 1970, Appendix III, s. XII) or by the Governor in Council under s. 683 of the Criminal Code. It should be noted that where a person is given a free pardon,



he is deemed never to have committed the offence for which he was convicted. If only a conditional pardon is granted, on the other hand, this pardon, which normally takes the form of a commutation or remission, affects only the sentence: the conviction stands. It should also be noted that where an absolute or conditional pardon is granted under the prerogative or under s. 683 of the Criminal Code, the Criminal Records Act, R.S.C. 1970 (1st Supp), ch. 12, provides that any record of a conviction in respect of which a pardon has been granted and which is in the hands of a department or agency of the Government of Canada must be kept separate and apart from other criminal records, and that its existence and contents cannot be disclosed unless the Solicitor General considers this necessary for reasons related to the administration of justice, or the security of Canada or any allied or associated state (ss. 6 and 9). This Act also provides that in all fields under the legislative authority of Parliament, including government services and the armed forces, no employment application form may contain any question that, by its terms, requires an applicant to disclose a conviction with respect to which he has been granted a pardon that has not been revoked (ss. 8 and 9).

Issuance of an absolute or conditional pardon is an exceptional measure. This is why Parliament passed the Criminal Records Act. The purpose of this Act, which applies to any person who has been convicted of an offence under a federal statute, including a person convicted under the Juvenile Delinquents Act or a person who has been given an absolute or conditional discharge under s. 662.1 of the Criminal Code and who is deemed not to have been convicted of the offence for which he was given this discharge, is to

remove the stigma resulting from a conviction as well as any negative social and economic effects such a conviction may have and thereby facilitate the rehabilitation of the person concerned. Accordingly, any individual who wishes to be protected from the harmful effects which might flow from disclosure of any criminal record in the possession of a federal agency or, in matters of employment, of his criminal background may ask, after the expiration of a waiting period which runs from the date on which the sentence imposed terminated and which varies in length, depending on the circumstances, from one to five years, for a pardon under this Act. The Governor in Council may grant such a pardon to any person who, since the date of his conviction, has shown good behaviour (ss. 2, 3 and 4). Such a pardon not only removes any disqualification resulting from such a conviction under an Act of Parliament, but also obliges a federal department or agency to keep separate any record relating to the offence for which the pardon was granted and prohibits disclosure of the existence and contents of such a record except in the circumstances mentioned in the preceding paragraph (ss. 5 and 6). In addition, the Criminal Records Act provides that no employer whose activities come under the legislative authority of Parliament, including the federal government and its departments, agencies and services, may include in an employment application form any question that by its terms obliges the applicant to disclose the existence of a conviction for which he has been granted a pardon that has not been revoked (s. 8).

It should be noted, finally, that the Canadian Human Rights Act prohibits any discrimination in matters of employment or in the provision of goods and services, including the

provision of residential accommodation or commercial premises, against a person who has received a pardon under the Criminal Records Act, the Royal prerogative or the provisions of the Criminal Code (ss. 5-13; s. 20).

#### Article 11

In federal law, there is no imprisonment for failure to fulfil contractual obligations. The only rights the creditors of an insolvent person have are those they are given under the Bankruptcy Act, R.S.C. 1970, ch. B-3. This Act provides for the liquidation of an insolvent debtor's assets, but does not allow creditors to require his imprisonment. A person who has become bankrupt is, nevertheless, liable to imprisonment if he has attempted to defraud his creditors, or committed any other act prohibited under the Bankruptcy Act (ss. 169 to 171; s. 172(3); s. 173(2)) or the Criminal Code (ss. 350, 355, 358 and 360).

#### Article 12

In federal law, with the exception of certain restrictions authorized under paragraph 3 of this Article, there are no restrictions on an individual's liberty of movement, including his right to leave Canada and return. It should be noted, however, that liberty of movement has not received any general statutory recognition. Certain aspects of this liberty are nonetheless recognized in Canadian law. Thus, s. 2(a) of the Canadian Bill of Rights clearly states that every "law of Canada" which would effect the arbitrary exile of any person shall be inoperative. Similarly, s. 4 of the Immigration Act, 1976, S.C. 1976-77, ch. 52, gives Canadian citizens, Indians registered pursuant to the Indian Act,



R.S.C. 1970, ch. I-6, even if they are not Canadian citizens, and, generally, permanent residents (landed immigrants who have not lost their permanent resident status, but have not yet acquired Canadian citizenship) the right to return to Canada after a stay abroad.

This lack of express statutory recognition does not affect liberty of movement in any way, however, because, in Canadian law, anything not prohibited is permitted.

The restrictions the federal Parliament has imposed upon liberty of movement are not only authorized under this Article but are also restricted in scope. These restrictions include the conditions that can be imposed under ss. 457, 457.6, 457.7, 458, 459, 608, 608.1, 752, 763 and 771 of the Criminal Code on a person who has been released pending trial or appeal, those that can be attached to a conditional discharge issued under s. 662.1 of the Code or to a probation order issued under s. 663, those that can be imposed under s. 10(1) of the Parole Act, R.S.C. 1970, ch. P-2, on an inmate released upon conditions and those that can be imposed under s. 14(3) of the Immigration Act, 1976 on a visitor.

### Article 13

With respect to the removal of a foreigner from Canada, a distinction must be made in federal law between, on the one hand, persons who entered Canada without complying with the rules governing the admission of immigrants and visitors, or persons who, having lawfully entered as immigrants or visitors, do not comply with the rules governing their stay; and, on the other hand, those persons who, although generally having no right to be in Canada, have obtained an entry permit

from the Minister of Employment and Immigration.

Under the Immigration Act, 1976, S.C. 1976-77, ch. 52, any foreigner staying in Canada other than under a Minister's entry permit, can be removed from Canada only on the grounds specified in the Act (s. 27) and in accordance with the procedure stated therein (ss. 29-36; ss. 39-42; ss. 70-85). This means, in practice, that a deportation order or a departure notice can be issued against a foreigner in Canada only after an inquiry by an adjudicator has been held in the presence of the person concerned, wherever this proves practicable (s. 29(1)). At this inquiry, which must be held in camera, but which observers may attend if such attendance is not likely to impede the inquiry (s. 29(2) and (3)), the person facing removal may be represented by a solicitor or by counsel of his choice who may not be a solicitor; and he will be given the opportunity to be heard (s. 30). Furthermore, where an adjudicator issues a deportation order or a departure notice against that person, the members of his family who are dependent upon him for support with the exception of Canadian citizens and permanent residents of eighteen years of age or more, may also be included in the deportation order, but only if they have been given the opportunity to be heard at an inquiry (s. 33; Immigration Regulations, 1978, SOR/78-172, s. 27).

It should be noted that with respect to persons engaging in certain activities, a special procedure may, in some instances, be used to bring about their removal from Canada. Thus, where the Minister of Employment and Immigration and the Solicitor General are of the opinion, based on security or criminal intelligence reports the disclosure of which would be injurious to national security or to the safety

of persons in Canada, that a permanent resident has engaged in or will engage in certain activities authorizing recourse to those proceedings, they may ask the Special Advisory Board to conduct investigations to determine whether use of this special procedure is justified and also whether the person concerned should be deported. If, after an inquiry held in camera, during which the person with respect to whom a report has been made has been able to present evidence, to be heard personally or by counsel, and to have testify on his behalf persons who are likely to give material evidence, the Board recommends deportation in its report, the Governor in Council may make a deportation order against that person (Immigration Act, 1976, s. 40). Likewise, when the inquiry concerns any person, other than a permanent resident, the Minister of Employment and Immigration and the Solicitor General may sign and file with the adjudicator a certificate stating that in the opinion of the Minister and the Solicitor General, based on security or criminal intelligence reports received and considered by them, and which cannot be revealed because of the need to protect the sources of this information, the person concerned is engaging in, or will engage in, certain prohibited activities. This certificate may not be called into question (s. 39). Its effect is to oblige the adjudicator to issue a removal order, and, in practice, it renders valueless any evidence presented by the person referred to in the certificate.

The Immigration Act, 1976 provides that permanent residents and persons in possession of returning residents permits may appeal to the Immigration Appeal Board from any removal order issued by an adjudicator; persons who have been recognized in Canada as refugee but who are not permanent



residents and individuals who are in possession of valid visas but who have been refused entry into Canada can also appeal to the Board against a removal order made against them under the Act (s. 72). This Act also provides that any person who claims that he is a refugee and against whom an adjudicator may issue a removal order or a departure notice if he has been determined by the Minister of Employment and Immigration not to be a refugee may, after the Minister has made such a determination, appeal to the Board for a redetermination of his status (ss. 45, 46 and 70). The Immigration Act, 1976 also provides that anyone who is not satisfied with a decision of the Board may appeal to the Federal Court of Appeal, with leave of that Court, on any question of law and from there to the Supreme Court of Canada, with leave of that court or of the Federal Court of Appeal (Immigration Act, 1976, s. 84; Federal Court Act, R.S.C. 1970, ch. 10 (2nd supp.), s. 31(2) and (3)). Finally, it should be mentioned that persons who are unable to exercise a right of appeal to the Board, such as, for example, a permanent resident against whom the special procedure described in s. 40 of the Immigration Act, 1976 was used, may apply to the Federal Court of Appeal under s. 28 of the Federal Court Act to have any decision made against them reviewed and set aside. They may even appeal to the Supreme Court of Canada from any decision of the Federal Court of Appeal with leave of the latter or of the Supreme Court itself (Federal Court Act, s. 31(2) and (3)).

Generally, the provisions of the Immigration Act, 1976 regarding the removal of foreigners staying in Canada, other than under a Minister's permit, do not conflict with the rights conferred under this Article. However, an exception could result from use of the special procedure found in s. 39

in a case where the act resulting in expulsion is purely criminal and has no political connotation, for it is not clear whether the exception of national security mentioned in the Covenant is sufficiently broad to cover non-political crimes.

A holder of a Minister's permit, that is, a person who would not normally have the right to be in Canada but who has been authorized to stay for a period not exceeding twelve months by the Minister of Employment and Immigration, who, in order to do so, used the discretionary power granted to him under s. 37(1), (2) and (3) of the Immigration Act, 1976, may remain in Canada for the period of time specified in the permit unless the Minister uses the discretion he possesses under s. 37(4) to extend this period or to cancel the permit. If the Minister cancels a permit or refuses to extend it after it expires, the permit holder must leave Canada without being able to use the right of representation recognized by this Article of the Covenant. However, this procedure does not seem to conflict with the provisions of that Article. Although he is in Canadian territory, the permit holder is not in Canada pursuant to the general provisions of the Immigration Act, 1976. He is in Canada pursuant to the discretionary power granted to the Minister under the Act. His stay in Canada is, accordingly, the result of the Minister exercising his discretionary power rather than of the procedure ordinarily governing entry into and stay within Canada set out in the Immigration Act, 1976. The length of his stay is also subject to the Minister's discretion. These are facts of which anyone who agrees to come to Canada pursuant to a Minister's permit is aware and accepts. Moreover, as Spence J. held, speaking for the Supreme Court of Canada in Minister of Manpower and Immigration v Hardayal,

(1978) 1 S.C.R. 470, at p. 478, the Minister is authorized to issue permits because "such power was, in the opinion of Parliament, necessary to give flexibility to the administration of the immigration policy" and one cannot "conclude that Parliament intended that the exercise of the power be subject to any such right of a fair hearing." Accordingly the Government of Canada is of the opinion that the treatment afforded to the holder of such a permit does not offend against Article 13 of the Covenant. Further, the Minister cannot abuse his discretion. In the above-mentioned decision, Spence J. clearly indicated, at page 479, "that in exercising what . . . is an administrative power, the Minister is required to act fairly and for a proper motive and his failure to do so might well give rise to a right of the person affected to take proceedings under s. 18(a) of the Federal Court Act".

#### Article 14

This Article accords to every person appearing before the courts a number of rights the purpose of which is to ensure that justice in both civil and criminal matters will be done equally and fairly.

Paragraph 1: Canadian law expressly gives individuals equality before the courts (Canadian Bill of Rights, ss. 1(b) and 2(e) and (f)) and, in criminal proceedings, the right to a public trial before an independent and impartial tribunal (Canadian Bill of Rights, s. 2(f)). It should be noted that although the right to a public trial is one of the fundamental features of the Anglo-Canadian legal system, in civil as well as in criminal matters (Scott v Scott, (1913)



A.C. 417), this right is nevertheless not absolute: in some cases, which this paragraph allows for, the public may be excluded from a hearing. At the federal level mention should be made of the following legislative provisions: the Criminal Code, ss. 441, 442 and 465(1)(j); the Juvenile Delinquents Act, R.S.C. 1970, ch. J-3, s. 12; the Official Secrets Act, R.S.C. 1970, ch. 0-3, s. 14(2).

The present paragraph also guarantees the right to be tried by a competent tribunal in both civil and criminal matters. At the federal level, the appointment process is aimed at ensuring the competence of judges. Thus, s. 3 of the Judges Act, R.S.C. 1970, ch. J-1, provides that "(no) person is eligible to be appointed a judge of a superior court (including the Supreme Court of Canada or the Federal Court), circuit or county court in any province or territory, unless . . . he is a barrister or advocate of at least ten years standing at the bar of any province or territory." Moreover, if a federal judge appears to be incompetent, biased, or otherwise incapable of carrying out his office, the Judges Act authorizes an inquiry by the Canadian Judicial Council which can result in the removal from office of the said judge (ss. 39 to 43; see also British North America Act, 1867, 30 & 31 Vict ch.3, s.99 (U.K.)).

Finally, there exists no restriction in the laws enacted by Parliament which prohibits the rendering in public of judgments in civil and criminal proceedings instituted under these laws. There is, however, one partial exception to this rule. In prosecutions under the Juvenile Delinquents Act, the identity of a child accused under this Act cannot be divulged in any newspaper or other publication, save if the

juvenile court grants leave to do otherwise (s. 12(3) and (4)). This restriction is designed to protect children and, as such, is allowed under the Covenant.

In addition to making judgments public, judges generally add reasons to their judgments and these are public. One exception, however, arises with respect to certain trials held under the Official Secrets Act. Though judgments rendered against persons charged under that Act are made public, the reasoning behind such judgments may be kept secret, if based on evidence which warranted a court to issue, at the request of the Crown, an order excluding the public or part of it from all or part of the trial (s. 14(2)). Such secrecy may not be necessary if the reasoning behind a judgment is worded in such a way as to avoid direct reference to the content of confidential material.

Paragraph 2: In Canada any person charged with an offence created under a federal enactment is "deemed not to be guilty of that offence until he is convicted thereof" (Criminal Code, s. 5(1)(a)). For a person to be found guilty, the prosecution must prove his guilt beyond a reasonable doubt. This common law rule, which has never been codified, requires that the prosecution prove, beyond a reasonable doubt, the existence of the elements which constitute an offence, actus reus and, except for strict liability offences, mens rea. As a rule, once the parties have presented their evidence, the accused will be acquitted if there exists in the mind of the court, or the jury, reasonable doubt as to his guilt, whether this doubt results from the insufficiency of the evidence adduced by the prosecution or from the evidence of the accused. Finally, under s. 2(f) of the Canadian Bill of Rights,

any law of Canada which deprives "a person charged with a criminal offence of the right to be presumed innocent until proved guilty according to law" will be declared inoperative by the courts.

Paragraph 3: Most of the rights listed in this paragraph, in so far as they are within the jurisdiction of Parliament, are specifically recognized in federal law.

Sub-paragraph a: The right of a person charged with a criminal offence to be informed promptly, and in detail, of the nature and cause of the charge against him is recognized in the Criminal Code (see supra, Article 9, paragraph 2). Mention should also be made of s. 2(c)(i) of the Canadian Bill of Rights. This section provides that no law of Canada shall be construed or applied, on pain of being declared inoperative by the courts, so as to "deprive a person who has been arrested or detained of the right to be informed promptly of the reason for his arrest or detention".

Finally, although no law of Canada expressly gives a person the right to be informed, at the time of his arrest, in a language he understands, of the charges against him, at the very least, the right to an interpreter which he is given in federal law (see infra, Article 14, paragraph 3(g)) implies that he will be informed, when brought before the court, of the charges in a language he understands.

Sub-paragraph b: Any person who is charged with having violated a statute passed by Parliament has the right to make full answer and defence to this charge, whether he is being prosecuted by indictment, or by summary conviction (Criminal Code, ss. 502, 577(3) and 737(1)). The right to make full answer and defence implies that the accused must



have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing. In this context reference ought to be made to R v Talbot, (1966) 3 C.C.C. 28, where Owen J., in a judgment rendered on behalf of the Quebec Court of Appeal, quashed a conviction and ordered a new trial because the accused, or rather his lawyer, had not been given sufficient time to prepare his defence with the result that the accused had not had the right to a full defence. It should also be noted that s. 2(c)(ii) of the Canadian Bill of Rights protects the right of any person who has been arrested or detained to retain and instruct counsel without delay.

Sub-paragraph c: The right to be tried without undue delay is not recognized in federal law. Moreover, since the majority decision of the Supreme Court of Canada in Rourke v The Queen, (1977) 35 C.C.C. (2d) 129, the courts have no longer been able to rely on the theory of abuse of process to suspend proceedings which might cause prejudice to an accused owing to undue delay in the conduct of the prosecution's case.

Sub-paragraph d: The right of an accused to be tried in his presence and to defend himself in person, or through legal counsel of his own choosing, is recognized in ss. 463, 465, 468, 502 and 577 of the Criminal Code in the case of indictable offences, and in ss. 735(2) and 737(1) and (2) in the case of summary conviction offences. However, under s. 431.1 of the Criminal Code, any accused who absconds during the course of his trial is deemed to have waived his

right to be present at his trial. The Court can then continue the trial and proceeds to a judgment and, if it finds the accused guilty, imposes a sentence on him in his absence or, again, it can issue a warrant for his arrest and adjourn the trial to await his appearance. If it follows the latter course of action, it can resume the proceedings if it becomes satisfied that it is no longer in the interest of justice to await the appearance of the accused. Should an accused be tried in his absence, his counsel, if he has retained one, may continue to act on his behalf. Finally, it should be mentioned that should an accused abscond, the Court may draw an adverse inference from this fact. Further, in summary conviction proceedings, section 738(3) of the Code allows for ex parte proceedings in cases where a defendant does not either personally, or by counsel, appear, after having been advised, within a reasonable time period before his trial was to take place, of the place and time where it was to be held in an appearance notice issued to him and not later revoked by a justice, or in a summons to appear served upon him; this section also allows for ex parte proceedings where the defendant does not appear for the resumption of a trial previously adjourned.

There is no provision of general application in federal law recognizing the right to legal assistance. However, persons charged with having infringed a criminal provision under federal law may, in the case of the majority of such offences, take advantage, throughout Canada, of provincial and territorial legal aid programs where they meet the eligibility requirements established by the provinces and territories. This assistance is available primarily because Parliament has approved funds which enable the federal

government to subsidize these programs. Moreover, under the Criminal Code, any court exercising an appellate jurisdiction except the Supreme Court of Canada and, in prosecutions by summary conviction, a court before which a decision is being appealed by way of stated case, may assign counsel to act on behalf of an accused who is a party to an appeal, or to proceedings preliminary or incidental to an appeal, if this appears desirable in the interests of justice and if it appears that the accused does not have sufficient means to provide himself with legal assistance (ss. 611, 755(1) and 771(2)).

Sub-paragraph e: In federal law, an accused can examine, or have examined, the witnesses against him and obtain the attendance and examination of witnesses on his behalf. This right is recognized in ss. 460, 502, 577(3) and 625 to 643 of the Criminal Code in the case of prosecutions by indictment and in ss. 460, 737 and 625 to 643 in the case of prosecutions by summary conviction. This right is also protected by s. 2(e) and (f) of the Canadian Bill of Rights which provides that any law of Canada that is construed or applied so as to abrogate, abridge or infringe the right of a person to a fair hearing is inoperative.

Sub-paragraph f: In all cases where an accused is present in court and does not understand the language used by the court, he has the right to an interpreter, whether or not he is represented by counsel. The accused must be both physically and mentally present in court, and this is impossible if he does not understand the language in which the proceedings are taking place. Refusal to provide the accused with the assistance of an interpreter for an



essential part of the proceedings in a prosecution by indictment or by summary conviction constitutes an infringement of this right and would allow him to appeal any conviction. In such a case, the accused could also invoke s. 2(g) Canadian Bill of Rights to have any decision made in his case quashed. Under this section "no law of Canada shall be construed or applied so as to . . . deprive a person of the right to the assistance of an interpreter in any proceedings in which he is involved or in which he is a party or a witness, before a court, commission, board or other tribunal, if he does not understand or speak the language in which such proceedings are conducted" (R v Reale, (1974) 13 C.C.C. (2d) 345 (Ontario Court of Appeal), upheld by the Supreme Court of Canada at (1975) 22 C.C.C. (2d) 571).

Further, Parliament has recently amended the Criminal Code so as to provide a procedure for obtaining trial of an accused by a justice of the peace, a magistrate, a judge or a judge and jury, whichever is appropriate, who speak the official language of Canada, either English or French, that is the language of the accused or, where the accused's language is not one of the official languages of Canada, who speak the official language of Canada in which the accused can best give testimony (ss. 462.1 - 462.4). These sections have not yet been proclaimed in force. However, for each province or territory, such a proclamation is expected to be made in the near future; namely as soon as there can be an effective exercise of the right granted by these sections.

Sub-paragraph g: The right of a person charged with an offence not to be compelled to testify against himself is recognized by the English common law respecting evidence in criminal proceedings as incorporated into federal

law by s. 7(2) of the Criminal Code as amended by s. 4(1) of the Canada Evidence Act, R.S.C. 1970, ch. E-10. This right is also given more limited protection in s. 2(d) of the Canadian Bill of Rights.

Paragraph 4: A child under the age of seven years can never be convicted of an offence (Criminal Code, s. 12). The same is true of a child who is seven years of age or more, but under the age of fourteen, unless it is established beyond a reasonable doubt that he was competent to know the nature and consequences of his conduct and to appreciate that it was wrong (Criminal Code, s. 13). Finally, no male person under the age of fourteen can be charged with the crimes of rape, attempted rape, incest or sexual intercourse with a female person under fourteen years of age (Criminal Code, s. 147).

Furthermore, to ensure that the care, supervision and discipline which a child found to be a juvenile delinquent by a juvenile court receives are as similar as possible to those he would receive from his father and mother and that, as far as possible, every juvenile delinquent is treated not as a criminal, but as a misguided child in need of assistance, encouragement and help, Parliament passed the Juvenile Delinquents Act, R.S.C. 1970, ch. J-3 (ss. 3(2) and 38). This Act is in force throughout Canada, except in Newfoundland where, for constitutional reasons, it does not apply. That province has its own legislation.

Save for the case of children, apparently or actually over the age of fourteen, charged with offences that are indictable offences under the Criminal Code or any other federal statute, and whose cases are heard by the regular courts because a juvenile court holds that this is in the interest of the child and of society, children who are charged with having

committed an act which is an offence under a federal, provincial or territorial statute or a municipal by-law made under a provincial or territorial statute when they were under the age of sixteen, or under the age of eighteen depending on the province or territory where that act was committed, may be brought before a juvenile court and be subject to a special set of rules for which provision is made in the Juvenile Delinquents Act (ss. 2(1) (child) and (2), 4 and 9). Under the Juvenile Delinquents Act a child who is adjudged to be a juvenile delinquent may be committed to the charge of an industrial school (s. 20(1)(i)).<sup>(1)</sup> This is the most drastic punishment provided for by this Act. In practice, however, a child who is brought before a juvenile court would not be committed to the charge of an industrial school, the court preferring to make use of less drastic means to attain the aims. Thus it may, at any time before it renders judgment, postpone the hearing sine die (s. 16) or may, after deciding that a child is a juvenile delinquent,

"a) suspend final disposition;

b) adjourn the hearing or disposition of the case from time to time for any definite or indefinite period;

c) impose a fine not exceeding twenty-five dollars, which may be paid in periodical amounts or otherwise;

d) commit the child to the care or custody of a probation officer or of any other suitable person;

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(1) A juvenile court may send any child to an industrial school. However, it cannot send a child apparently under the age of twelve to such a school unless, having tried other means of reforms provided for by the Juvenile Delinquents Act, it considers it necessary in the best interest of the child and of society to provide for his commitment to an industrial school (s.25).



e) allow the child to remain in its home, subject to the visitation of a probation officer, such child to report to the court or to the probation officer as often as may be required;

f) cause the child to be placed in a suitable family home as a foster home, subject to the friendly supervision of a probation officer and the further order of the court;

g) impose upon the delinquent such further or other conditions as may be deemed advisable;

h) commit the child to the charge of any children's aid society, duly organized under an Act of the legislature of the province and approved by the lieutenant governor in council, or, in any municipality in which there is no children's aid society, to the charge of the superintendent, if there is one" (s. 20(1)(a) to (h)).

In conclusion, we should point out that a juvenile court can summon back before it any child over whom it has retained jurisdiction after declaring him to be a juvenile delinquent and upon whom it has imposed a punishment under s. 20(1) until the child reaches the age of twenty-one. If it wishes, it may either reduces the punishment it has imposed on him or impose a harsher one on the basis of the child's behaviour since his conviction. If it decides to impose a harsher punishment, it may order that any young offender who is over the age of fourteen and who is accused of committing an act which is an indictable offence under the Criminal Code or any other law be proceeded against by indictment before the ordinary courts so that he may be tried for the offence of which it had already convicted him (ss. 20(3) and (4) and 21).

It should be noted, finally, that the Juvenile Delinquents Act does not repeal the provincial or territorial statutes relating to the protection or benefit of children (s. 39). Accordingly, where the appropriate authorities in a province or a territory consider that it is possible to deal

with a child's case under these statutes rather than under the Juvenile Delinquents Act, they may take advantage of the provisions of these statutes in order to ensure the welfare of the child. However, if the appropriate authorities in a province or a territory decide to bring proceedings against a child under the Juvenile Delinquents Act, and if the case is heard by the juvenile court of a province or territory, the Juvenile Delinquents Act does not totally exclude the use of provincial or territorial law in such a case. Thus, after a child has been found guilty of an act that is not an indictable offence under the provisions of the Criminal Code and has been declared a juvenile delinquent under s. 20(1) of the Juvenile Delinquents Act, he may be dealt with either under a provincial or territorial statute or under the Juvenile Delinquents Act, as may be deemed to be in the best interests of the child (s. 39). Moreover, where a juvenile delinquent has been dealt with under the Juvenile Delinquents Act, and a judge of the juvenile court has issued an order under s. 20(1) of that Act committing the Child to a children's aid society, a superintendent of child welfare or an industrial school, that child may be dealt with under a provincial or territorial statute if the secretary of a province or territory so orders. Whenever such an order is made, a child becomes subject to provincial law; he no longer falls within the jurisdiction of the juvenile court with respect to the offence for which he has been convicted, although that court retains its jurisdiction respecting any new offences the child might commit (s. 21).

Paragraph 5: In criminal proceedings any person who is convicted of an offence, found unfit to stand trial on account of insanity, or found not guilty on account of insanity

may appeal the verdict. Sections 601 to 624 of the Criminal Code give any person who, on account of insanity, is unfit to stand trial or has been declared not guilty the right to appeal the verdict, whether he has been prosecuted by indictment or by summary conviction (see in particular Criminal Code, ss. 603(2) and 620). In the case of decisions which do not involve any verdict based on the accused's insanity, ss. 601 to 624 of the Criminal Code govern the appeal procedure in all cases where the person has been prosecuted by indictment, whereas ss. 747 to 771 of the Criminal Code and s. 41 of the Supreme Court Act, R.S.C. 1970, ch. S-19, govern the appeal procedure in cases where a person has been prosecuted by summary conviction.

In certain cases the right of appeal is governed by special statutory provisions. Thus, persons found guilty under the Juvenile Delinquents Act, R.S.C. 1970, ch. J-3, whether they are children charged with an offence under a federal, provincial or territorial statute or adults charged with having committed acts likely to contribute to juvenile delinquency (ss. 33 and 34), have, in all cases where the appeal is considered necessary on grounds of public interest or for the due administration of justice, a right of appeal that can be exercised pursuant to the provisions of s. 37 of this Act. Finally, an appeal may be brought to the Supreme Court of Canada in the circumstances and conditions set out in s. 41 of the Supreme Court Act.

Paragraph 6: Each province is responsible for the application of the Criminal Code in its own territory and prosecutes any person committing an offence against its provisions. The Attorney General of Canada acts as prosecutor in the provinces only in proceedings brought under a statute



other than the Criminal Code. In the Northwest Territories and in the Yukon, the Attorney General of Canada acts as prosecutor with respect to acts or omissions which infringe not only the provisions of the Criminal Code, but also of other federal statutes (Criminal Code, s. 2 (Attorney General)). It should be noted that in the Territories the Attorney General of Canada is, at present, the only person authorized to bring proceedings for breaches of the territorial ordinances on behalf of the Territorial governments (Department of Justice Act, R.S.C. 1970, c. J-2, s. 5(a) and (d)). However, lawyers employed by the Territorial governments are authorized to bring, as agents of the Attorney General of Canada, proceedings against persons who infringe certain territorial ordinances, such as those concerning workmen's compensation and employment standards.

There is no provision in federal law to award compensation to persons convicted as a result of a prosecution brought by the Crown in right of Canada if their conviction is subsequently quashed, or if they are subsequently pardoned, on the grounds that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice. Any compensation they may receive from the Crown in right of Canada is purely ex gratia.

Paragraph 7: In federal law, a person who has already been acquitted or convicted for an offence may not be tried or punished again for the same or a similar offence. To avoid a new trial, that person may use the defences of autrefois acquit or autrefois convict. These pleas are based, with respect to offences that are prosecuted on indictment, on ss. 535 to 538 of the Criminal Code, and in the case of offences that are prosecuted on summary conviction, on common law (the use of which is authorized in this case by s. 7(3) of

the Criminal Code) and on s. 743 of the Criminal Code. A person who has been acquitted or convicted at an earlier trial for a given offence, or who might have been found guilty of this offence if there had been sufficient evidence, may use the defence of autrefois acquit or autrefois convict if at a later date he is charged with either the same or a similar offence.

The rule that a person may not be convicted twice for the same offence may, however, not apply if Parliament so provides. In this context we should mention s. 20(3) of the Juvenile Delinquents Act, R.S.C. 1970, ch. J-3. This section enables a juvenile court, in all cases where it retains its jurisdiction over a child,<sup>(1)</sup> to review a decision which it has previously rendered and, as a result of this review, to order any juvenile delinquent over the age of fourteen years who had been "charged" before it with an indictable offence to be proceeded against by indictment in the ordinary criminal courts, and this at any time before he reaches the age of twenty-one, notwithstanding the fact that the said court may previously, and for the same offence, have taken other measures against the child. In R v Olafson, (1969) 4 C.C.C. 318, the Court of Appeal of British Columbia held that a plea of autrefois convict, entered by a child whom a juvenile court had, under s. 20(3), sent to the regular criminal courts, could not stand, because this section clearly authorizes such action.

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1) A juvenile court may not review a decision it has previously made if the secretary of a province or of a territory issues an order to the effect that any child adjudged to be a juvenile delinquent under s. 20 of the Juvenile Delinquents Act and referred to a children's aid society, a superintendent of child welfare or an industrial school must be dealt with under provincial or territorial legislation (Juvenile Delinquents Act, s. 21).

We should also mention that under s. 11 of the Criminal Code, if an act or omission constitutes an offence covered by more than one federal statute, the person who does the act or makes the omission "is, unless a contrary intention appears, subject to proceedings under any of those Acts, but is not liable to be punished more than once for the same offence". In Kienapple v The Queen, (1975) 1 S.C.R. 729, Doré v The Queen, (1975) 1 S.C.R. 756, Coté v The Queen, (1975) 1 S.C.R. 303 and The Queen v Loyer and Blouin, (1978) 21 N.R. 181, the Supreme Court of Canada went even farther and stated that, while a person may be indicted on two or more distinct offences resulting from the same act or series of acts, he may be convicted in such a case of only one offence. Therefore, if a person is indicted on two or more charges resulting from the same act, he may be convicted only on the most serious charge which the Crown succeeds in proving. If he is convicted of more than one charge, he may, because of s. 7(3) of the Criminal Code, use the common law defence of res judicata to have all, except the most serious conviction, set aside.

#### Article 15

There is no constitutional or statutory provision in Canadian law which expressly prevents Parliament from enacting retroactive legislation. However, in Anglo-Canadian law there is a rule of interpretation whereby a statute is presumed to have no retroactive effect unless there is express provision to the contrary, or unless this can be deduced by necessary implication.



Although Parliament has the power to enact legislation with retroactive effect, such statutes are always regarded, in the Anglo-Canadian legal tradition, as being contrary to the general principles governing the conduct of public affairs. Such legislation is the exception, rather than the rule. The general rule is that Parliament, although it has the power to enact legislation with retroactive effect, will not use this power to create new offences or to increase the penalties for existing offences. Since Canada has ratified the Covenant, it is doubtful that Parliament would enact legislation contravening the provisions of Article 15.

Federal law provides that if after an offence is committed, but before a penalty is imposed, a statute creating an offence is repealed and replaced by a new statute which imposes a reduced or mitigated penalty for the same or a similar offence, any penalty, for an offence committed under the repealed statute, if imposed after the repeal, is to be reduced or mitigated accordingly (Interpretation Act, R.S.C. 1970, ch. I-23, s. 36(e)). However, there is no generally applicable statutory provision which would enable a person convicted of an offence to be given a reduced penalty if, following his conviction, a new statute provides a lighter penalty for the said offence. In cases of this kind, persons already convicted may benefit from such a reduction only if this is expressly provided for in the said statute. Thus, when the death penalty for non-military crimes was abolished by the Criminal Law Amendment Act (No 2), 1976, S.C. 1974-75-76, ch. 105, Parliament provided in s. 25 of the Act for the commutation of all death sentences already pronounced but not yet commuted.

When a statute reduces the penalty provided for an offence, but does not provide that this reduction will apply to persons already convicted of the said offence, these persons, although they do not benefit from an automatic reduction of the penalty, may obtain a reduction in the penalty if they are given a pardon, either by the Governor in Council under s. 683 of the Criminal Code, or by the Governor General under the royal prerogative. They may also, when they are eligible for full parole, that is when they have served that part of the prison term which an inmate must serve for a given type of offence before becoming eligible for full parole, petition the Parole Board for such parole. In such a case, the fact that a statute reduces the penalties for an offence, without providing for a reduction in sentence for those persons already convicted of the said offence, may affect the Board's decision. It should be noted, however, that the Board grants a full parole only if it feels that an inmate has derived the maximum benefit from his imprisonment and will not pose an undue risk to society (Parole Act, R.S.C. 1970, ch. P-2, ss. 9(1)(a) and 10(1)(a); Parole Regulations, SOR/78-428, ss. 4-8; Criminal Code, ss. 669-674).

#### Article 16

The right to recognition as a person before the law which this Article recognizes as inherent to all individuals is the right to have rights and to assume obligations, in other words to be the subject of rights and obligations. This principle is part of federal law. Every person to whom federal legislation and the rights and prerogatives of the Crown in right of Canada apply must be considered a person before the law.

Article 17

As a result of Canada's accession to the Covenant, the federal Government undertook, under this Article, to recognize an individual's right to his privacy and reputation. This right is not absolute; it may be subject to certain restrictions as long as these are neither arbitrary nor illegal. It should be mentioned, for example, that the interception of private communications by means of an electromagnetic, acoustic, mechanical or other device and the carrying out of a search may be authorized under the Criminal Code (ss. 178.11 et seq.; ss. 443-444) and that the administration of a penitentiary can censor inmates' correspondence and supervise the visits they receive (Penitentiary Service Regulations, SOR/62-90, s. 2.18).

Parliament, within the ambit of its jurisdiction, has enacted several Acts which protect an individual's rights to his privacy and reputation. In this regard, mention may be made of the provisions of the Criminal Code which prohibit:

- (a) the unauthorized interception of communications by means of an electromagnetic, acoustic, mechanical or other device and disclosure of the information thus obtained (ss. 178.11 et seq). Under these provisions, any unauthorized interception of a private communication makes this communication and evidence obtained thereby, directly or indirectly, inadmissible as evidence, save as otherwise provided (s. 178.16). Furthermore, any person convicted of intercepting or disclosing information obtained as a result of unauthorized interception may, at



the request of the injured party, be ordered by the court which convicted him to pay the injured person a sum not exceeding \$5,000 in punitive damages. However, nobody can be ordered to pay punitive damages if the injured party has already brought an action under the Crown Liability Act, R.S.C. 1970, ch. C-38, (s. 178.21);

- (b) conveyance by letter, telegram, telephone, cable, radio, or otherwise, of messages known to be false, with intent to injure or alarm any person (s. 330(1));
- (c) use of a telephone to convey indecent words with intent to alarm or annoy someone (s. 330(2));
- (d) false accusations or any act intended to cast suspicion on an innocent party (s. 128));
- (e) defamatory libel (ss. 261 et seq);
- (f) save exceptions, questions relating to the sexual conduct of a complainant with a person other than the accused in cases of prosecution for rape, attempted rape, sexual intercourse with a female person who is under the age of fourteen years, and indecent assault of a female person, and the publication of information obtained as a result of such questions, when these are authorized (s. 142);
- (g) the publication of reports in relation to any judicial proceedings for dissolution of marriage, nullity of marriage, judicial separation or restitution of conjugal rights, with the ex-

ception of certain specifically authorized particulars (s. 162);

- (h) in certain specified cases, publication or distribution of information obtained in the course of a judicial interim release hearing, a preliminary inquiry or a trial (ss. 457, 457.2, 457.5, 457.6, 457.7, 458 and 459; ss. 467 and 470; ss. 441, 442 and 576.1);
- (i) loitering or prowling at night, without lawful excuse, upon the property of another person near a dwelling house situated on that property (s. 173);
- (j) breaking and entering a place, or being unlawfully in a dwelling house, with intent to commit an indictable offence therein (ss. 306-307).

Sections 40, 41 and 42 of the Criminal Code also recognize the right of everyone who is in peaceable possession of a dwelling house or real property to defend his property and use reasonable force to do so. In addition, ss. 73 and 74 prohibits the forcible entry into or detainer of real property that is in actual and peaceable possession of another in a manner that is likely to cause a breach of the peace.

Besides the Criminal Code, several statutes contain provisions which protect the individual's right to privacy and reputation. Thus, s. 12 of the Juvenile Delinquents Act, R.S.C. 1970, ch. J-3, provides that trials of children take place without publicity and prohibits the publication of any report in which the name of the child, of the child's parent or guardian, or of any school or institution that the child is alleged to have been attending or of which the child is alleg-

ed to have been an inmate is mentioned, except when authorized by a judge. Similarly, s. 43 of the Post Office Act, R.S.C. 1970, ch. P-14, states that the mail is not liable to demand, seizure or detention while in the course of post, except in the manner provided for in the said Act and Regulations. In practice, this means that no domestic first class mail may be opened; in respect to mail coming from abroad, letters may not be opened without the recipient's authorizazation, but any other piece of mail which a customs officer suspects of containing some object subject to customs or the importation of which is prohibited, may be so opened (s. 5(1)(r) and 46).

Parliament has also enacted several Acts which prohibit, save exceptions, the disclosure of information obtained as a result of their application. In this context, mention ought to be made of s. 107 of the Canada Pension Plan Act, R.S.C. 1970, ch. C-5, ss. 17 and 18 of the Family Allowances Act, 1973, S.C. 1973-74, ch. 44, s. 241 of the Income Tax Act, R.S.C. 1952, ch. 148, s. 19 of the Old Age Security Act, R.S.C. 1970, ch. 0-6 and ss. 16 and 17 of the Statistics Act, S.C. 1970-71-72, ch. 15.

Mention ought also be made of Part IV of the Canadian Human Rights Act under which all Canadian citizens and every individual lawfully admitted to Canada for permanent residence have the right of access to records containing personal information concerning them for any purpose, including the purpose of ensuring accuracy and completeness, and that this right must be protected to the greatest extent consistent with the public interest (s. 2(b); ss. 49 et seq). Moreover, s. 52(2) provides that every individual who has the right of access to his record is entitled to be consulted, and must consent, before personal information concerning him and



provided by him to a government institution for a particular purpose is used, or made available for use, for any non-derivative use for an administrative purpose. No consent is required where this use is authorized by, or pursuant to, law. Finally, s. 13 of this Act prohibits the use of the facilities of a telecommunication undertaking within the legislative authority of Parliament to expose a person or persons to hatred or contempt by reason of the fact that the said person or persons are identifiable on the basis of a prohibited ground of discrimination; namely, race, national or ethnic origin, colour, religion, age, sex, marital status, conviction for which a pardon has been granted and, in matters related to employment, physical handicap.

It should be noted that federal law is of general application and that, consequently, it applies to police officers as well as to the rest of the population. Accordingly, any illegal interference with the private life of a person committed by a peace officer is punishable under the Criminal Code and any other relevant federal legislation. Thus, a peace officer who carries out an illegal search of the person of an individual who has not been arrested may be charged with assault (Criminal Code, s. 245). Similarly, if a police officer, when not authorized to do so in law, conducts a search without a warrant, he becomes an intruder, and this allows the occupant of a house or a building and those assisting him to use as much force as is necessary in the circumstances to prevent such a search. If the police officer resists an attempt to remove him, he is deemed to have committed an assault without justification or provocation (Criminal Code, ss. 41 and 245). Moreover, a police officer who carries out an illegal search and seizure could, if the facts of the case

justified such action, be charged with breaking and entering a place or with being unlawfully in a dwelling place with intent to commit an indictable offence therein (Criminal Code, ss. 306-307) or with theft (Criminal Code, ss. 283 and 294).

#### Article 18

The Canadian Bill of Rights recognizes to every individual freedom of religion without discrimination by reason of race, national origin, colour, religion or sex (s. 1(c)), and provides that any law of Canada which abrogates, abridges or infringes this freedom is to be inoperative (s. 2). Besides freedom of religion, s. 1 of the Bill also recognizes a number of rights and freedoms which are ancillary to the exercise of freedom of religion. These are the right to enjoyment of property, the right to equality before the law and to the protection of the law, freedom of speech, freedom of assembly and association and freedom of the press. Thus, in Canada, the major components associated with freedom of religion and listed in the Covenant; namely,

- (a) freedom of conscience,
  - (b) freedom of worship,
  - (c) freedom of association,
  - (d) freedom to propagate and teach,
  - (e) absence of legal incapacity or disability, and
  - (f) absence of discrimination on the part of the state against one or more, or all, religions,
- are recognized and protected by the Bill.

In the absence of a decision by the courts to the contrary, we must give a liberal interpretation to the concepts of freedom of religion and freedom from discrimination

based on religion as found in s. 1 of the Bill. In other words, until we have an indication to the contrary, the concept of religion must include not only all religions, whatever their basic tenets and beliefs, but also the right not to have a religion.

We would mention that there are a number of provisions in Canadian law by means of which Parliament ensures the free practice of religion. For example:

- (a) the provisions in the Criminal Code which prohibit the obstruction or prevention of the celebration of divine service or any other religious or moral function (s. 172), blasphemous libel (s. 260) or the promotion of genocide or hatred directed against a particular religious group (s. 281.1 - 281.3);
- (b) the provisions in the Radio (TV) Broadcasting Regulations, SOR/64-50, which prohibit a television station or a network operator from broadcasting any abusive communications or abusive pictorial representations with respect to any religion or creed or from using profane material or language (s. 5(1)(b) and (c)). There are similar provisions respecting AM and FM broadcasting (Radio (AM) Broadcasting Regulations, SOR/64-49, s. 5(1)(b) and (c); Radio (FM) Broadcasting Regulations, SOR/64-249, s. 5(1)(b) and (c);
- (c) the provisions of the Canadian Human Rights Act, which prohibit, in those areas falling



within the legislative authority of Parliament, the denial of goods, services, accommodation, commercial premises, residential accommodation or employment on religious grounds; discrimination in employment for such reasons; and the use of the facilities of a telecommunication undertaking within the legislative authority of Parliament to expose to hatred persons or groups of persons who are identifiable on the basis of religion (s. 3; ss. 5-18). Under this Act any person who is a victim of a prohibited discriminatory practice is entitled to file a complaint with the Canadian Human Rights Commission (s. 32);

- (d) the provisions of the Juvenile Delinquents Act, R.S.C. 1970, ch. J-3, which provide that the religion of a child shall, where possible, be respected when he is placed in the care of a children's aid society, or in a foster home (s. 23);
- (e) the provisions of the Unemployment Insurance Act, 1971, S.C. 1970-71-72, ch. 48, under which the Canadian Employment and Immigration Commission must ensure that the National Employment Service will not discriminate against a person on the ground of, inter alia, religion, when comes the time to refer him to a prospective employer (s. 139(2)(b)).

Finally, it ought to be mentioned that Parliament,

when it enacted the Lord's Day Act, R.S.C. 1970, ch. L-13, made Sunday, which for Christians is a holy day, a day of rest for all, save those who can engage in work authorized under that Act. Even though the purpose of this Act is to preserve the holy character of the most important day of the week for Christians, it does not restrict freedom of religion as recognized in the present Article. As clearly indicated by Ritchie J. in the decision he rendered on behalf of the majority of the Supreme Court of Canada in Robertson and Rosetanni v. The Queen, (1963) S.C.R. 651, at pages 657 and 658, this Act does not affect or restrict the right of non-Christians to have, and practice, their religion, nor does it affect their right to propagate their beliefs. For non-Christians, the practical results of the Lord's Day Act are financial rather than religious: they are prevented by this Act from working or doing business on Sunday. This is doubtless an inconvenience, but it does not constitute a suppression, restriction or violation of their freedom of religion.

#### Article 19

Freedom of speech and freedom of the press are recognized by the Canadian Bill of Rights (s. 1(d) and (f)). The exercise of these freedoms, is, in some cases, subject to certain restrictions which do not, however, contravene the provisions of Article 19 since they are based on the need to protect national security, public order, public health or morals or to respect the rights and reputation of others.

In most cases, such restrictions are easily justified, their basis being self-evident. This is true, for example, of

the provisions in the Criminal Code which prohibit

- (a) seditious words and actions (ss. 60-62);
- (b) the use of words, writings or any other means to interfere with, impair or influence the loyalty or efficiency of the Canadian Armed Forces (s. 63);
- (c) certain conduct or action tending to corrupt morals (ss. 159-165);
- (d) blasphemous libel (s. 260);
- (e) defamatory libel (ss. 261-281); and
- (f) in certain specified cases, the publication or broadcasting of information obtained in the course of a judicial interim release hearing, a preliminary inquiry or a trial (ss. 457, 457.2, 457.5, 457.6, 457.7, 458 and 459; ss. 467 and 470; ss. 441, 442(3) and 576.1).

This is also true of the provisions in the Canada Elections Act, R.S.C. 1970 (1st Supp), ch. 14, which determine the period during which political parties and candidates may publish or broadcast their election publicity (ss. 13.7 and 61.2), or which limit the amounts of money which these parties and candidates may spend during an election (ss. 13.2 and 61.1). It is also the case with s. 14 of the Customs Tariff Act, R.S.C. 1970, ch. C-41, which prohibits the importation into Canada of books, printed paper, drawings, paintings, prints, photographs seditious, or of an immoral or indecent character (Schedule C, item 99201-1). Further, it is also the case with s. 7 of the Post Office Act, R.S.C. 1970, ch. P-14, which authorizes the Postmaster General to prohibit the delivery of all mail directed to a person or deposited by that person in a post office when he believes, on reasonable grounds, that that person is, by means of the mails, committing or attempting to



commit an offence (for example, sending pornographic material) or aiding or procuring any person to commit an offence or, with intent to commit an offence, is using the mails for the purpose of accomplishing his object.

The question does arise whether the application of a national broadcasting policy does not, sometimes, result in restrictions on the freedom of expression, which would be contrary to Article 19. This is not the case, however. Broadcasting is based on the use of Hertzian waves, which belong to the public domain. Accordingly, use of these waves is a privilege and not a right. The government, which must take the national interest into consideration in administering the public domain, may therefore not only determine who shall have access to the Hertzian waves, but also, once this is done, determine the rights and obligations of those who have applied for and obtained a broadcasting licence. Therefore, neither the directive of the Governor in Council prohibiting the issuance of broadcasting licences to non-Canadians or to corporations which are not under Canadian ownership or control (Direction to the Canadian Radio-Television Commission, SOR/69-590), nor the regulations of the Canadian Radio and Telecommunications Commission, which require a minimum Canadian content in the programming of radio and television stations (Radio (A.M.) Broadcasting Regulations, SOR/64-49, s. 12; Television Broadcasting Regulations, SOR/64-50, s. 6A), conflict with Article 19. These policies are not, in fact, intended to restrict freedom of expression, but rather to ensure the development of a Canadian broadcasting system and to protect and enrich Canadian culture and strengthen the political, social and economic structure of the country. In other words, these restrictions, which pertain to the administration of the

public domain, are justified on the grounds of public policy.

In conclusion, it should be mentioned that the successful operation of the Canadian parliamentary system is dependent upon the freedom of speech of members of both Houses of Parliament. This is why any civil or criminal action for defamation brought against a Senator or a member of the House of Commons for what he has said in the House of which he is a member, or in a committee of that House, must be dismissed by the civil or criminal courts. The same applies to any civil or criminal proceedings against a person who has been called upon to testify before a committee of the Senate or House of Commons. Moreover, persons who publish reports, papers, votes or proceedings under the authority of the Senate or the House of Commons cannot be convicted for what is contained therein. Similarly, any person who publishes, without the authority of the Senate or House of Commons, any report, paper, votes or proceedings that have already been published under the authority of one or other of these Houses may not be found liable in civil or criminal proceedings if he proves that the document in question is the same as the one published under the authority of one of the Houses. Finally, any person who prints an excerpt or an abstract from any report, paper, votes or proceedings, the publication of which has been authorized by either the Senate or the House of Commons, cannot be found guilty by the civil or criminal courts if he can show that this excerpt or abstract was published bona fide and without malice (Senate and House of Commons Act, R.S.C. 1970, ch. S-8, ss. 4-5; ss. 7-9).

#### Article 20

Paragraph 1: There is no law prohibiting propaganda in favour of war. An individual or organization may, therefore, legally disseminate such propaganda. The Government of

Canada cannot do so, however, without breaking the commitments it made by signing the Covenant.

Paragraph 2: The Criminal Code prohibits hate propaganda against any group that can be distinguished by colour, race, religion or ethnic origin. For this purpose ss. 281.1 and 281.2 of the said Code prohibit incitement to genocide or hatred. In addition, s. 281.3 authorizes the seizure or forfeiture to Her Majesty in right of a province of all hate propaganda intended for sale or distribution.

No proceeding for an offence under ss. 281.1, 281.2 and 281.3 may be undertaken without the consent of the Attorney General of the province in which the offence is alleged to have been committed.

Moreover, under s. 13 of the Canadian Human Rights Act, it is a discriminatory practice, and may be ground for a complaint to the Human Rights Commission, "for a person or a group of persons acting in concert to communicate telephonically, repeatedly, in whole or in part by means of the facilities of a telecommunication undertaking within the legislative authority of Parliament, any matter that is likely to expose a person or persons to hatred or contempt by reason of the fact that that person or those persons are identifiable" on the basis of race, national or ethnic origin, colour, religion, age, sex, marital status, conviction for which a pardon has been granted or, in matters related to employment, physical handicap. Further, s. 12 of the Act also states that, in matters of federal jurisdiction, whoever publishes, as regards the provision of goods, services, facilities, commercial premises or lodging as well as in respect to employment and conditions of employment, material

indicating that he practices or intends to practice discrimination on the basis of one of the above mentioned prohibited grounds of discrimination or inciting others to practice such prohibition engages in a discriminatory practice which allows a complaint to be filed against him with the Commission.

#### Article 21

The Canadian Bill of Rights states that every individual, regardless of race, social origin, colour, religion or sex, has the right to freedom of assembly (s. 1(e)). However, this right is not absolute since it is, in effect, subject to considerations of public order. For example, the Criminal Code penalizes any participation in an unlawful assembly (s. 67) or a riot (ss. 66 and 69). Finally, it should be noted that, under s. 745 of the said Code, any person who fears that a public assembly may cause personal injury to himself, his wife or his children or may result in damage to his property may lay an information against the organizers of that assembly. If a justice is satisfied that the information is well-founded, he may require the organizers to enter into a recognizance, with or without sureties, to keep the peace.

#### Article 22

Closely linked to freedom of speech, of the press and of assembly is freedom of association. This freedom is protected by s. 1(e) of the Canadian Bill of Rights.

Workers in Canada can generally avail themselves of this freedom in order to form and join unions. Parliament has not only abrogated the common law rule that the primary purpose of a trade union, namely negotiation with an employer,



is an unlawful act because it was intended to restrain trade (Criminal Code, ss. 424 and 425; Combines Investigation Act, R.S.C. 1970, ch. C-23, s. 4(1)(a); Trade Unions Act, R.S.C. 1970, ch. T-11, s. 29), but has also given all employees in the Public Service, Crown Corporations and all other public or private enterprises under its jurisdiction, with some exceptions (for example, members of the armed forces and the Royal Canadian Mounted Police, administrative and management personnel and personnel involved in staff relations), the right to join a union and take part in its lawful activities (Canada Labour Code, R.S.C. 1970, ch. L-1, ss. 107(1), 108, 109 and 110; Public Service Staff Relations Act, R.S.C. 1970, ch. P-35, ss. 2, 4, 5 and 6). It should also be mentioned that a legal strike is not a crime in Canada (1) (Criminal Code, s. 380(2)), and that it is illegal for an employer, in order to oppose the unionization of his business, to refuse to employ

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(1) Though an illegal strike is not, per se, illegal in Canada, it can, in some circumstances, result in the commission of an offence. To this effect, reference should be made to s. 380(1) of the Criminal Code which states that "every one who wilfully breaks a contract, knowing or having reasonable cause to believe that the probable consequences of doing so, whether alone or in combination with others, will be

- (a) to endanger human life,
  - (b) to cause serious bodily injury,
  - (c) to expose valuable property, real or personal, to destruction or serious injury,
  - (d) to deprive the inhabitants of a city or place, or part thereof, wholly or to a great extent, of their supply of light, power, gas or water, or
  - (e) to delay or prevent the running of a locomotive engine, tender, freight or passenger train or car, on a railway that is a common carrier,
- is guilty of
- (f) an indictable offence and is liable to imprisonment for five years, or
  - (g) an offence punishable on summary conviction."

or to dismiss an individual only for the reason that he is a member of a trade union or to seek, by intimidation, to compel workmen to abstain from belonging to a trade union (Criminal Code, s. 382; Public Service Staff Relations Act R.S.C. 1970, ch. P-35, ss. 8, 9, 39(1) and 42(2)).

Freedom of association is, however, not absolute. Federal law imposes certain limitations on the exercise of this freedom, restrictions which are, nevertheless, consistent with the provisions of this Article of the Covenant. Thus, in addition to the above mentioned restrictions on the right to join a trade union, the Criminal Code prohibits conspiracies, including all conspiracies in restraint of trade save those purporting to the legal activities of trade unions while the Combines Investigation Act prohibits certain practices the effect of which is to restrain trade, including union activities, if these do not form part of the union's reasonable activities (Criminal Code, ss. 423-424; Combines Investigation Act, s. 4(1)(a)). Moreover, a union may not use violence or intimidation to recruit members or to negotiate an agreement with the employer (Criminal Code, ss. 305 and 381). Similarly, the Canadian Human Rights Act prohibits an employee organization from discriminating on the basis of race, national or ethnic origin, colour, religion, age, sex, marital status, conviction for which a pardon has been granted or physical handicap in granting membership and the rights and benefits this confers upon an individual (ss. 3, 9 and 10). Finally, it should be mentioned that the Public Service Staff Relations Act, R.S.C. 1970, ch. P-35, prohibits the Public Service Staff Relations Board from certifying, as bargaining agent for a bargaining unit, any employee organization that discriminates against any employee because of sex, race,

national origin, colour or religion (s. 39(3)). This Act also requires that the Board revoke the certification of any employee organization which practices a prohibited form of discrimination where a request to this effect is submitted to it by an employer or an employee and where the alleged discrimination has been proved (art 42(2)).

### Article 23

Because of its jurisdiction over marriage and divorce (British North America Act, 1867, 30 & 31 Vict., ch 3, s. 91(26) (U.K.)), over criminal law (BNA Act, s. 91(27)) and over Indians and lands reserved for the Indians (BNA Act, s. 91(24)), Parliament may pass laws relating to the matters dealt with in this Article. Except with respect to Indians (a term which includes Inuit: Re Eskimos, (1939) S.C.R. 104), this jurisdiction is not exclusive since the provinces may also pass legislation affecting marriage and the family as part of their jurisdiction over property and civil rights (BNA Act, s. 92(13)) and the solemnization of marriage (BNA Act, s. 92(12)).

Paragraph 1: In the preamble to the Canadian Bill of Rights, the Parliament of Canada recognizes that one of the principles on which the Canadian nation is founded is the position of the family in a society of free men and free institutions. Canada therefore recognizes that "the family is the natural and fundamental group of society and is entitled to protection by society and the State". It is in this context that the provision of the Criminal Code prohibiting bigamy (ss. 254-255), polygamy (s. 257), feigned marriage

(s. 256) and unlawful solemnization of marriage (ss. 258 and 259) must be placed. Similarly, the Canadian system of family allowances (Family Allowances Act, 1973, S.C. 1973-1974, ch. 44) should also be mentioned, as must one of the objectives of Canada's immigration policy, the facilitation of the reunions in Canada of Canadian citizens and permanent residents with their close relatives from abroad (Immigration Act, 1976, S.C. 1976-77, ch. 52, s. 3(c)).

Paragraph 2: Although the Parliament of Canada has jurisdiction to pass legislation concerning marriage, it has exercised this jurisdiction only to authorize certain marriages prohibited by civil law in Quebec and by common law in the rest of the country; namely marriage to the brother or sister of a deceased spouse, or marriage to the son or daughter of the brother or sister of a deceased spouse (Marriage Act, R.S.C. 1970, ch. M-5). Other than this, Canadian law regarding marriage is based on the Civil Code in Quebec and on common law and provincial legislation in the rest of Canada.

Article 115 of the Civil Code in Quebec and common law in the other provinces state that a man cannot contract marriage before the full age of fourteen years, and a woman before the full age of twelve years. Any change in the law regarding the age of consent for marriage comes under the jurisdiction of Parliament. Certain provinces have, however, by exercising their jurisdiction over the solemnization of marriage, and in the absence of any relevant federal legislation, raised the age of marriage by refusing to issue marriage licences to persons who have not reached the age prescribed in a provincial statute. This was done, for example, by the leg-



islature of British Columbia, which decreed in s. 30 of the Marriage Act, R.S.B.C. 1960, ch. 232, that, save certain exceptions, no licence would be issued to persons aged less than sixteen years. A provincial statute of this type was held to be intra vires of the legislative authority of the provinces in Hobson v Gray, (1958) 25 W.W.R. (2d) 82, at pp. 87 and 88, on the ground that it was not aimed directly at changing the law regarding the age of consent for marriage, but rather involved the exercise by a province of its jurisdiction over the solemnization of marriage.

Paragraph 3: Article 116 of the Civil Code states that there is no marriage when there is no consent. The common law rule is to the same effect. It should also be noted that under s. 248 of the Criminal Code it is an indictable offence to take away a female person with intent to force her to marry a male person.

Paragraph 4: Under its legislative authority with respect to the criminal law, Parliament enacted s. 197 of the Criminal Code whereby it imposes upon every married person the duty to provide necessities of life to his spouse during marriage if the latter is in destitute or necessitous circumstances, or if the failure to perform this duty endangers his health or life. It should also be noted that Parliament has incorporated an extremely broad definition of marriage into this section. For the purpose of this section "evidence that a person has cohabited with a person of the opposite sex or has in any way recognized that person as being his spouse is, in the absence of any evidence to the contrary, proof that they are lawfully married". In addition, under its legisla-

tive authority with regard to divorce, Parliament passed the Divorce Act, R.S.C. 1970, ch. D-8. Among other things, this Act enables the Court to provide for the custody and maintenance of children, not only during the divorce proceedings, but also afterwards (ss. 10 and 11).

In addition to these statutes of general application, Parliament has provided, in the Indian Act, R.S.C. 1970, ch. I-6, that subject to any Indian treaty or to any Act of Parliament other than the Indian Act, any law of general application in force in a province is applicable to Indians to whom the Indian Act applies, except to the extent that it is inconsistent with the Indian Act (s. 88).<sup>(1)</sup> Consequently, subject to these restrictions, provincial law respecting the rights and obligations of spouses applies to Indians. It should be noted, however, that Parliament has enacted special provisions respecting the disposition of the property of Indians who ordinarily reside on a reserve, or on lands belonging to Her Majesty in right of Canada or a province, and who die testate or intestate (s. 4(3); ss. 42-50).

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(1) The Indian Act, R.S.C. 1970, ch. I-6, does not apply to Eskimos. Within the meaning of the Indian Act, an Indian is any person registered or entitled to be registered as an Indian. If a person does not meet the criteria governing registration set out in ss. 11 and 12 of the Indian Act, he cannot be considered as an Indian for the purposes of the Indian Act. Also a person ceases to be an Indian if he is enfranchised by the Governor in Council (s. 110). The latter may, at the request of an Indian and if the Minister of Indian and Northern Affairs

## Article 24

Although before the international community, the Government of Canada is solely responsible in case of any non-compliance with this Article, within Canada, no level of government has exclusive jurisdiction over children. Each level of government, within its fields of jurisdiction, can legislate to protect children. This, the federal government has done.

Paragraph 1: In Canada, both Parliament and the provinces may, within their respective jurisdictions, pass legislation to protect children. At the federal level, in addition to the protection provided by the legislation mentioned in Articles 10, 14 and 23 of the Covenant, Parliament, using the powers conferred upon it by s. 91(27) of the British North American Act, has criminalized certain acts and types of behaviour whose main victims are children. The following might be mentioned as examples:

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(Continued from page 94)

is of the opinion that the applicant is of the full age of twenty-one years and is capable of assuming the duties and responsibilities of citizenship and of supporting himself and his dependants, enfranchise the applicant, his wife and his minor children (s. 109(1)). He would not, however, enfranchise the wife, and minor children living with her, when she is living apart from her husband. If such separation subsequently ends, however, he may enfranchise the wife and her children (s. 109(3)). Finally, though a person can lose his right to be an Indian by the application of s. 12, the Governor in Council can still enfranchise him. Thus, although an Indian woman who marries a non-Indian loses the right to be registered as an Indian in the Indian register and her name must be struck from this Register, the Governor in Council may still, as of the date of her marriage, enfranchise her. He may also declare that all or any of her children are enfranchised as of the date of the marriage, or such other date as the order may specify (ss. 2(1)(Indian), 5, 7, 12(1)(b) and 109(2)).

- (a) encouraging delinquency or inducing a child to leave a detention home or foster home (Juvenile Delinquents Act, R.S.C. 1970, ch. J-3, ss. 33 and 34);
- (b) under certain conditions, sexual intercourse between a male person and a female person under the age of sixteen years (Criminal Code, s. 146);
- (c) for the parent or guardian of a female person under the age of fourteen years, to cause the defilement of that person (Criminal Code, s. 166);
- (d) for anyone in charge of premises, to permit a female person under the age of eighteen years to be defiled therein (Criminal Code, s. 167);
- (e) endangering the morals of a child under the age of eighteen years by acts committed in the home of that child (Criminal Code, s. 168);
- (f) failure by a parent or guardian of a child under the age of sixteen years to provide that child with the necessities of life (Criminal Code, s. 197);
- (g) unlawfully abandoning or exposing a child under the age of ten years so that his life or health is, or is likely to be endangered (Criminal Code, s. 200);
- (h) causing the death in the act of birth of a child (Criminal Code, s. 221);



- (i) failure by a female person who, with the intent that a child shall not live or with the intent to conceal the birth of a child, fails to obtain assistance during child-birth if this failure results in the death or permanent injury of the child (Criminal Code, s. 226);
- (j) procuring an abortion, other than a therapeutic abortion authorized by the therapeutic abortion committee of an accredited or approved hospital (Criminal Code, s. 251);
- (k) supplying a drug, noxious thing, or instrument, knowing that it is intended to be used to procure an abortion (Criminal Code, s. 252); or advertising, offering for sale, or selling any means, drug, or article intended as a method of causing abortion (Criminal Code, ss. 252 and 159(2)(c)).

Although its jurisdiction in matters of criminal law is the principal means by which it can enact children protection legislation, Parliament can also invoke other heads of power in order to give children the protection they require as minors. Thus, using its spending power (British North America Act, 1867, s. 91(1A) (public debt and property) and (3) (raising of money by any mode or system of taxation), Parliament has set up a family allowance system (Family Allowance Act, 1973, S.C. 1973-74, ch. 44); moreover, in the exercise of its authority over works, undertakings or businesses falling under its jurisdiction, it has prohibited employers from hiring children under the age of seventeen

years unless authorized to do so by the regulations made under the Canada Labour Code (Canada Labour Code, R.S.C. 1970, ch. L-1, ss. 36, 38(f) and 69; Canada Labour Standards Regulations, SOR/72-7, s 10). In addition, as regards broadcasting, the Canadian Radio-Television and Telecommunications Commission, an agency created by Parliament to control the use of Hertzian waves by broadcasters, requires that every broadcaster who wishes to obtain a licence, must comply, when transmitting advertising directed towards children, with the provisions of the Broadcast Code for advertising to children prepared by the Canadian Association of Broadcasters.

Parliament, using its jurisdiction over Indians (British North America Act, 1867, 30 & 31 Vict, ch. 3, s. 91(24)), enacted the Indian Act R.S.C. 1970, ch. I-6. This Act, which applies to all Indians ordinarily residing on a reserve or on lands belonging to Her Majesty in right of Canada or a province (s. 4(3)), provides for the protection of Indian children. First, it provides that subject to any Indian treaty or any Act of Parliament other than the Indian Act, all laws of general application in force in a province or territory, including laws applicable to children, shall apply to all Indians therein found, except to the extent that such laws are inconsistent with the Indian Act (s. 88). Secondly, it contains special provisions which derogate from provincial law and, therefore, prevent its application. This legislation allows Indian children to share in the estate of any parent who dies intestate (ss. 48-50), enables the Minister of Indian and Northern Affairs to administer or provide for the administration of the property of Indian children (s. 52) and provides for their education (ss. 114-123).

In the area of education, the Indian Act requires that every Indian child who has attained the age of seven years attend school at least until the end of the school term during which he becomes sixteen (s. 116). In addition, in order to ensure the attendance of Indian children at school, the Minister may appoint truant officers who have the power to convey an Indian child to school using force if necessary (s. 119(1) and (6)). If an Indian child does not attend school, his parents are liable, for each notice of truancy served upon them by a truant officer, to a fine of not more than \$5. or to imprisonment for a term not exceeding ten days or to both (s. 119(3) and (4)). A child who fails to attend school or has been either expelled or suspended is deemed to be a juvenile delinquent within the meaning of the Juvenile Delinquents Act (s. 120).

Paragraph 3: The right of a child to acquire Canadian citizenship, either automatically at birth, or by grant of the Minister, is recognized in ss. 3 and 5 of the Citizenship Act, S.C. 1974-75-76, ch. 108.

#### Article 25

Paragraphs a and b: In Canada, legislative power is vested in the Parliament of Canada which consists of the Queen, the Senate, whose members are appointed by the Governor General, and the House of Commons, whose members are elected by universal suffrage and by secret ballot by adult citizens in a single round, using the majority uninominal system. In order for a bill to have force of law, it must be passed by the Senate and the House, and receive Royal assent. Executive power is vested in the Queen whose authority is delegated to

her representative in Canada, the Governor General. He, in turn, invites the leader of the party holding a majority of seats in the House of Commons or, when no party holds a majority, the leader of the party that has the confidence of the House, to form a government which then exercises the executive power. Thus, the citizens of Canada choose the government by electing the members of the House of Commons. This government is then responsible to the House and, in the final analysis, is accountable for its administration to the electors in a general election.

In Canada, general elections must be held at least once every five years. Section 50 of the British North America Act 1867, 30 & 31 Vict., ch. 3 (U.K.), states clearly that:

"Every House of Commons shall continue for Five Years from the Day of the Return of the Writs for choosing the House (subject to be sooner dissolved by the Governor General), and no longer".

However, s. 91(1) provides that a House of Commons may in time of real or apprehended war, invasion or insurrection be continued by Parliament "if such continuation is not opposed by the votes of more than one-third of the members of such House".

The procedure for a general or by-election is governed by the Canada Elections Act, R.S.C. 1970, ch. 14 (1st Supp). Under this Act, Canadian citizens have the right and the opportunity to vote and to be elected at genuine elections by universal and equal suffrage and by secret ballot (ss. 14, 16, 20, 21, 39(1) and (5), 44, 49, 50, 58, 65 et seq). There



are however, certain restrictions to the right to vote or seek election. Thus, the following persons cannot vote or seek election: the Chief Electoral Officer, the Assistant Chief Electoral Officer, the returning officers for each electoral district, the judges appointed by the Governor in Council, persons undergoing punishment in penal institutions for the commission of offences, persons restrained of their liberty of movement or deprived of the management of their property by reason of mental disease, or persons disqualified from voting under any law relating to the disqualification of electors and candidates for corrupt or illegal practices (ss. 14 and 21). These restrictions do not conflict with Article 25 of the Covenant as they can be categorized as reasonable and are, therefore, allowed under that Article.

It should also be mentioned that the political rights of government employees are subject to certain restrictions. Thus, although a government employee to whom s. 32 of the Public Service Employment Act applies may attend a political meeting or contribute to the election funds of a candidate or a political party, such an employee may not "engage in work for, on behalf of or against a candidate for election as a member of the House of Commons, a member of the legislature of a province or a member of the council of the Yukon Territory or the Northwest Territories" or "engage in work for, on behalf of or against a political party" (s. 32(1) and (2)). Similarly, no government employee may stand as a candidate in a federal, territorial or provincial election except with the authorization of the Public Service Commission. The latter may grant any employee who is not the deputy head of a department or other portion of the Public Service to which it has the exclusive right and authority to appoint persons leave of absence without pay to seek

nomination as a candidate and to be a candidate in a federal, territorial or provincial election if it is of the opinion that the usefulness to the Public Service of the employee in the position he then occupies would not be impaired by reason of his having been a candidate. This leave, if granted, ends on the day on which the results of the election are officially declared or on any such earlier day as may be requested by the employee if he has ceased to be a candidate (s. 32(1) and (3)). It should be noted that once elected, a candidate ceases to be an employee (s. 32(5)). These restrictions, which are aimed at protecting the apolitical character of the federal Public Service, are not unreasonable and are therefore permitted under this Article of the Covenant. Moreover, even if they involve certain restrictions on freedom of speech, assembly and association, it cannot be said that they infringe the provisions of Articles 19, 21 and 22 of the Covenant. These restrictions are based on considerations of public policy and are therefore authorized under these Articles.

In addition, the Government of Canada has given Indians living on Canadian reserves a significant measure of internal independence in managing their affairs. The Department of Indian and Northern Affairs' policy in this respect is to encourage the gradual development of local administrative machinery on the reserves. The management of local affairs in any particular Indian band is given either to a band council chosen according to the custom of the band or, where there is no council, to the chief of the band chosen according to the custom of the band, or to a band council elected in accordance with the Indian Act, R.S.C. 1970, ch. I-6 (s. 2(1) (council of the band)).

Most of the Indian bands today have a council elected in accordance with the Indian Act (s. 74(1)). This

council consists of one chief and, for every one hundred members of the band, one councillor, but the number of councillors may not be less than two or more than twelve (s. 74(2)). Chiefs and councillors hold office for two years (s. 78(1)).

Under the Act, the Governor in Council has the right to make regulations providing that the chief of a band must be elected, either by a majority of the votes of the electors of the band, or by a majority of the votes of the elected councillors of the band from among themselves. In the latter instance, the chief so elected must remain a councillor. The Act also provides that councillors must be elected by a majority of the votes of the electors of the band unless the majority of the band has, at a referendum, decided that the reserve should be divided into electoral sections and the Governor in Council, upon a recommendation from the Minister, has decided to give effect to this decision and has divided the reserve into no more than six electoral sections. In such a case, a councillor must be elected by a majority of the votes of the electors residing in the electoral section in which the candidate resides and that he proposes to represent (s. 74(3) and (4)). If, in an electoral section, more than one councillor must be elected, the candidates who receive the highest number of votes are elected.

Any member of the band who is of the full age of twenty-one years and is ordinarily resident on the reserve is qualified to vote for a person nominated to be chief of the band (where the latter is elected directly by the electors) and to vote for persons nominated as councillors where the reserve consists of only one electoral section. Where the reserve is divided into several electoral sections, a member of the band can vote in an electoral section only if he is



ordinarily resident in that section (s. 77).

All eligible electors, except those guilty of corrupt practice, dishonesty, malfeasance or of accepting bribes and whom the Minister of Indian and Northern Affairs has declared ineligible for a period not exceeding six years, may be nominated for the position of chief (when the latter is elected by the electors) and the position of councillor. Where a reserve is divided into electoral sections, however, only an elector eligible to be nominated and residing in a section may be nominated for a position as councillor in this section. For a person to become a candidate, his nomination must be moved and seconded, at a meeting to nominate candidates, by electors who are themselves eligible to be nominated (s. 75 and 78(3); Indian Band Election Regulations, SOR/54-425, s. 4(3)).

When several persons have been nominated for the same position, the election is held by secret ballot (s. 76(2)).

Paragraph c: Access to the Public Service is governed by the Public Service Employment Act, R.S.C. 1970, ch. P-32. This Act, which does not conflict with the present paragraph, provides that appointments and promotions in the Public Service be based on selection according to merit (s. 10). It also provides that in prescribing selection standards, including language requirements, the Public Service Commission must not discriminate against any person by reason of sex, race, national origin, colour, religion, marital status or age (s. 12). Further, under the Canadian Human Rights Act, the Crown is prohibited from discriminating in matters relating to employment on the basis of race, national or ethnic origin, colour, religion, age, sex, marital status, conviction



for which a pardon has been granted or physical handicap (ss. 3, 8, 10, 11 and 63). Finally, although it is true that the Public Service Employment Act allows persons who are appointed by a Minister, and employed in his office, to be appointed without competition, and in priority to all other persons, to a position in the Public Service, such persons, to have access to the Public Service, must be qualified for appointment therein (s. 37). This provision is not contrary to the present paragraph. It simply recognizes what may be regarded as a transfer.

#### Article 26

Section 1(b) of the Canadian Bill of Rights recognizes the right of every individual, without discrimination by reason of race, national origin, colour, religion or sex, to equality before the law and the protection of the law.

In Attorney General of Canada v Lavell, [1974] S.C.R. 1349, at pages 1365 to 1367, the Supreme Court of Canada concluded that the concept of equality before the law as recognized in s. 1(b) of the Canadian Bill of Rights was different from that recognized by the 14th Amendment to the United States Constitution, as interpreted by the courts of that country. In the opinion of the Supreme Court, the phrase "equality before the law" must be interpreted in light of the "rule of law" as conceived by Professor A.V.Dicey. In his book Introduction to the Study of the Constitution, Prof. Dicey indicated that the "rule of law" implies, inter alia, equality before the law or the equal subjection of all classes to the ordinary law of the land administered by the ordinary courts of the land. In Dicey's view, this concept excludes the idea of any exemption of officials or others from the duty

of obedience to the law which governs other citizens, or from the jurisdiction of the ordinary courts. In the opinion of the Supreme Court, equality before the law as recognized in the Canadian Bill of Rights means "equality in the administration or application of the law by the law enforcement authorities and the ordinary courts of the land."

In the Lavell case, the Supreme Court of Canada came to the conclusion that s. 12(1)(b) of the Indian Act, R.S.C. 1970, ch. I-6, which stipulates that any woman who is a registered Indian loses the right to be so registered when she marries a non-Indian, does not contravene, on the ground of sex discrimination, the principle of equality before the law as recognized in the Canadian Bill of Rights and as interpreted by the Court, notwithstanding the fact that a man would not lose his Indian status if he married a non-Indian woman. Whatever may be said about this decision, the Government of Canada has undertaken to revise the Indian Act, including the various sections dealing with Indian status, and has taken measures to ensure that this revision is done only after consultation with the Indians.

In conclusion, it should be noted that, notwithstanding the fact that the provisions of the Canadian Bill of Rights do not prohibit discrimination on the basis of language, political or other opinion, social origin, property, birth or other status, a person cannot be discriminated against for any of the above reasons under a statute adopted by Parliament unless that type of discrimination is permitted under that statute, or under another statute whose provisions apply to that statute. This is so because one of the fundamental rules of Canadian law is that a statute must be interpreted as it stands. For this reason, any federal statute that grants a right to any person, and does not

authorize discrimination for some reason, must be interpreted as not authorizing discrimination. Further, any law which would allow discrimination on any basis whatsoever would be inoperative if such law abrogated, abridged or infringed upon any right or freedom recognized in ss. 1 and 2 of the Canadian Bill of Rights.

#### Article 27

No federal law exists that would deny persons belonging to ethnic, religious or linguistic minorities the right, in community with the other members or their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language. The Official Languages Act, R.S.C. 1970, ch. 0-2, which states that "the English and French languages are the official languages of Canada for all purposes of the Parliament" (s. 2), in no way derogates from any legal or customary right or privilege acquired or enjoyed by other languages (s. 38). Further, any legislation which would restrict the right conferred to minority groups by the present Article would be inoperative if the courts held that it abrogated, abridged or infringed upon the freedoms of religion, speech, assembly and association, and press as recognized in s. 1(c), (d), (e) and (f) of the Canadian Bill of Rights.

From the point of view of this Article, it should be noted that the Multiculturalism Directorate of the Department of the Secretary of State administers a number of programs designed to encourage the development of a society in which individuals and groups have an equal chance to develop and express their cultural identity as an integral part of Canadian life. Similarly, the Official Language Minority

Groups Directorate administers various programs the aim of which is to promote amongst these groups the use of their language so that they can participate fully in the cultural life in the provinces and regions where they are a minority. Through these programs, it tries to promote and encourage the social and cultural development of these groups and facilitate their recognition and acceptance by the surrounding linguistic majority.

In addition, the Department of Indian and Northern Affairs seek to maintain and develop Indian culture in Canada. Thus, in view of the important role that the education given to Indians plays in preserving and maintaining their culture, the Department supports the adoption of Indian cultural enrichment programs. Such programs are now offered in most federal and provincial schools. In addition, approximately 200 federal and 50 provincial schools now offer courses where Indian languages are either used for teaching, or are taught. In addition, the Department offers financial support to Indian cultural and educational centres.

In the Northwest Territories, Labrador and northern Quebec, the Department has financially assisted Inuit individuals, groups and organizations in need of assistance to preserve their cultural identity within the framework of Canadian society. It also encourages Inuit artists to attend exhibitions of their work, to obtain documentation to write books, and to participate in cultural exchange conferences. For example, the Department, in collaboration with the National Film Board and the Department of the Secretary of State provides financial assistance to Inuit film-makers and certain other groups to make films for public viewing. Lastly, the Inuit Language Commission has created a new Inuit writing system based on commonly used syllabic characters and roman letters.



2. Examination of the Law of the  
Northwest Territories and of  
the Yukon.

The territory over which the Hudson's Bay Company had trading rights, known as Rupert's Land and the North Western Territory, was transferred by Great Britain to Canada, effective July 15th, 1870. To this were added, on September 1st, 1880, all the remaining British territories in North America, save the Colony of Newfoundland and its dependencies. The provinces of Manitoba, Saskatchewan and Alberta were formed from this vast area: other parts of it were transferred to the existing Provinces of Ontario and Quebec. At present, however, one third of the area of Canada remains outside of the provinces, and is organized into two territories, the Northwest Territories and the Yukon Territory (henceforth to be called the Yukon).

As previously noted, Canada is a federal country, but the Northwest Territories and the Yukon are not provinces. They are areas over which the Parliament has, in law, plenary power, that is to say both federal powers and those elsewhere exercised by the provinces. Even though the Territories are not provinces, they are entitled, like all other areas of Canada, to representation in both Houses of Parliament. Thus, the residents of the Territories who are qualified voters, and exercise their franchise, are entitled, like all other Canadians, to elect members to the House of Commons; also both of Canada's northern territories are entitled to be represented in the Senate by one member each. Parliament has, moreover, created territorial governments and has granted them a number of the powers and responsibilities

of provincial governments. Such matters as overall jurisdiction over labour relations, ownership of Crown lands and the power to prosecute which the provincial Attorneys-General possess, have not been transferred.

The governance of the Territories is provided for by the Northwest Territories Act, R.S.C. 1970, ch. N-22 and the Yukon Act, R.S.C. 1970, ch. Y-2. These Acts provide that each territory shall have a government consisting of a chief executive officer appointed by the Governor in Council and known as Commissioner, and of an elected Council which holds office for four years unless previously dissolved by the Governor in Council after consultation with its members. The Commissioner administers the government of the territory under instructions from the Governor in Council, or the Minister of Indian and Northern Affairs. Legislative authority is vested in the territorial Commissioner in Council with the result that ordinances adopted by a territory's Council must receive the assent of the territorial Commissioner to acquire force of law. In both Territories, the Commissioner in Council, subject to the Act setting up the territorial government or to any other Act of the Parliament of Canada, has, to the same extent as a provincial legislature, the power to legislate with respect to such matters as local taxes, liquor sales, the preservation of game, the establishment and tenure of territorial (governmental) offices, municipal institutions, education, licencing, the incorporation of companies, the solemnization of marriage, property and civil rights, the administration of justice, the imposition of fines, imprisonment and penalties for the violation of territorial ordinances, and generally with all matters of a local or private nature in the Territory. Further,

a territorial Commissioner in Council can also legislate with respect to council-related matters. It can enact ordinances pertaining to elections of members of the Council, controverted elections, and qualifications of electors, candidates or Council members. It can also legislate as to the size of the territorial Council. This power, however, is somewhat restricted since Parliament has decreed that the Council of the Northwest Territories shall never have fewer than fifteen members or more than twenty-five while that of the Yukon can never have a membership of less than twelve or of more than twenty (Northwest Territories Act, R.S.C. 1970, ch. N-22, ss. 3(1), 4, 8, 8.1, 9, 13 and 14(1); Yukon Act, R.S.C. 1970, ch. Y-2, ss. 3, 4, 9, 9.1, 14, 16 and 17(1)).

Although it can be seen from the above that Parliament has conferred extensive legislative power upon the territorial Commissioners in Council, it has retained for itself and the federal Government three key instruments of control. First, it has given to the Governor in Council and to the Minister of Indian and Northern Affairs the power to give instructions to the territorial Commissioner with respect to the administration of the Territories. Second, it has expressly recognized, in any or all circumstances, priority to statutes of the federal Parliament.<sup>(1)</sup> Third, it has given to the Governor in Council the

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(1) An example of this is the Canadian Human Rights Act, S.C. 1976-77, ch. 33 which, in so far as Parliament has not otherwise provided, applies to the Territories in respect to matters over which the Territories have jurisdiction. Thus, under this Act, the Governor in Council could order that the sections of the Act dealing with the right of access of citizens and permanent residents to governmental records containing personal information concerning them be made to apply to the territorial governments (s. 62(2)).

power to disallow any territorial ordinance, or portion thereof, within one year of its passage (Northwest Territories Act, ss. 4, 13 and 16(2); Yukon Act, ss. 4, 16 and 20(2)). This power, it should be noted, is similar to the one which the Governor in Council can, pursuant to sections 56 and 90 of the British North America Act, 1867, 30 & 31 Victoria ch. 3 (U.K.), exercise with regard to any act adopted by a provincial legislature.

As a rule, the Acts under which the territorial governments operate do not require consultation between a territorial Commissioner and a territorial Council but in fact the territorial Commissioners seek the cooperation of Council members in the exercise of their administrative duties. Thus while consultation between the Commissioner and Council of a territory is required only in the Yukon where the Yukon Act imposes a duty upon the territorial Commissioner to consult with the Advisory Committee on Finance, consisting of three members of the Council appointed by the Commissioner upon the recommendation of the Council, in respect to "the preparation of the estimates of the expenditures and appropriations required to defray the charges and expenses of the Public Services of the Territory" for a fiscal year (Yukon Act, R.S.C. 1970, ch. Y-2, s. 12), in practice, elected legislators are, in both Territories, appointed to the territorial executive committees, and all major policy decisions are taken on the advice of the territorial Councils.

#### (a) General Comments

The Covenant on Civil and Political Rights is not part of the law of the Northwest and Yukon Territories and, therefore, does not have force of law. This being, it cannot serve as the basis of a civil or penal recourse enforceable by the courts. Protection of the various rights and freedoms



recognized in the Covenant must, therefore, in so far as they fall within the jurisdiction of the Territories, be sought under territorial law.

While the territorial Commissioners in Council have not enacted Bills of Rights, the Canadian Bill of Rights, R.S.C. 1970, Appendix III, was held by the Supreme Court of Canada, in The Queen v. Drybones, (1970) S.C.R. p. 282 (291), to apply to territorial legislation. This is because territorial ordinances enacted under the Northwest Territories Act and the Yukon Act are to be considered "laws of Canada" for the purpose of the Bill. Therefore, any territorial ordinance which is construed by the courts as abrogating, abridging or infringing any right recognized by the Canadian Bill of Rights would be inoperative. Also, British common and statute law which is part of the law of the territories is considered, because it can be repealed, abolished or altered by Parliament, to be part of the "law of Canada" as defined in s. 5(2) of the Canadian Bill of Rights and, as such, subject to the application of the Bill.

Apart from the protection afforded by the Canadian Bill of Rights, the rights and freedoms recognized under the Covenant are also afforded protection under the laws of England relating to civil and criminal matters as they existed on July 15, 1870 to the extent that these laws are applicable to the Territories, and have not subsequently been repealed, altered, varied, modified or affected with respect to the Territories by any Act of the Parliament of the United Kingdom or of the Parliament of Canada or by a territorial ordinance (Northwest Territories Act, R.S.C. 1970, ch. N-22, s. 18; Yukon Act, R.S.C. 1970, ch. Y-2, s. 22). Protection of some of these rights is also provided in territorial ordinance law. The protection afforded to the rights recognized in territorial common or ordinance law is either administrative, penal or judicial in nature and is discussed in the comments found in Article 2 of the Covenant.

(b) Comments on Articles found in Parts  
I, II and III of the Covenant.

Article 2:

Although the International Covenant on Civil and Political Rights is not part of the law of the Northwest Territories or of the Yukon, the rights and freedoms therein recognized are, nevertheless, for the most part, protected in territorial law. Furthermore, these rights are usually protected without any discrimination whatsoever because territorial law, as a rule, applies to everyone.

The Covenant indicates that any person whose rights or freedoms, as therein recognized, are violated ought to have an effective remedy. As the Covenant is not part of the law of the Territories, the recourses available to any person when a right, recognized in the Covenant and protected by territorial law, is violated, lie in territorial law. As is the case at the federal level, these recourses vary according to the right affected. Thus, an individual who suffers discrimination in matters of employment or services offered the public, including accommodation, may, under both territorial Fair Practices Ordinances, make a complaint to an officer appointed by the Commissioner so that he may examine the complaint and try to effect a settlement. If the officer is unsuccessful, he may make recommendations to the Commissioner who may then issue any order he deems necessary to carry into effect these recommendations and bring about a successful resolution of the complainant's grievance. Should the complainant, or any other party affected by the Commissioner's order, feel

that the order is inadequate, he may ask a judge of the territorial Supreme Court to vary it. The territorial Fair Practices Ordinances also allow an individual to lay an information against the person whom he accuses of discrimination so that the latter may be brought before the courts and, if found guilty, convicted of an offence (Fair Practices Ordinance, R.O.N.W.T. 1974, ch. F-2, ss. 7-9; Fair Practices Ordinance, C.O.Y.T. 1976, ch. F-2, ss. 6-8). Further, any individual who is illegally held can seek from the Supreme Court of a Territory a writ of habeas corpus. The same individual could also seek damages for illegal detention. Tort law also affords an individual the possibility of seeking damages for such acts as assault, abuse of legal process resulting in imprisonment, battery, defamation, or trespass. It ought also to be mentioned that since the Canadian Bill of Rights applies to the Territories, an individual may ask the courts to declare inoperative any part of territorial law which contravenes the Bill.

In addition to these various administrative, penal and judicial recourses, it should be mentioned that in both Territories, legal aid is available to persons who cannot afford, or can only partially afford, legal assistance. This aid is with respect to criminal, penal and, subject to certain exceptions, civil matters. In the Northwest Territories, the legal aid program has its basis not on legislation, but on an agreement between the Government of Canada and the territorial government; in the Yukon, it is based on the Legal Aid Ordinance, C.O.Y.T. 1976, ch. L-3.1.

Employees of the territorial governments can be sued personally in tort for wrongs committed in the course of their employment. However, although such persons are agents of the Crown in right of Canada, the latter cannot be sued for their tortious acts since the Crown Liability Act does not include amongst the persons for whose tortious acts the Crown is liable individuals appointed or employed by or under the authority of an ordinance of the Northwest Territories or of the Yukon (Crown Liability Act, R.S.C. 1970, ch. C-38, s. 2 (servant)). Nor is a territorial Commissioner responsible for the actions of such persons as they are not his employees or servants, but employees or servants of the Crown (Kezar v. The Queen and Commissioner of Northwest Territories, (1977) 2 W.W.R. 83).

Article 3:

Under the Covenant, the territorial governments are committed to ensuring that both men and women enjoy equally the civil and political rights set forth therein. In each territory, there exists a Fair Practices Ordinance which, inter alia, prohibits in matters of employment and services offered to the public, including lodging, any discrimination or publicity indicating discrimination, or an intention to discriminate, on the ground of sex (Fair Practices Ordinance, R.O.N.W.T. 1974, ch. F-2, ss. 3, 4, 5, 6 and 13; Fair Practices Ordinance, C.O.Y.T. 1976, ch. F-2, ss. 3, 4, 5 and 13). In the Yukon, further provision is made to prohibit discrimination on the basis of sex with respect to appointments to the territorial public service (Public Service Commission Ordinance, C.O.Y.T. 1976, ch. P-10.1, s. 99)). Though no



equivalent provision can be found in the law of the Northwest Territories, practice in that Territory is to the same effect. There, all collective agreements signed by the territorial government with its employees contain a clause by which it undertakes to practice no discrimination on the basis of sex.

Article 4:

In both the Northwest Territories and the Yukon, legislation has been enacted which allows the territorial Commissioners, in cases where a war emergency has been proclaimed under the War Measures Act, R.S.C. 1970, ch. W-2 or when there is a real or apprehended peace-time disaster, to declare that a state of emergency exists in the Territory or any part thereof and to take, within the limits of the jurisdiction of the Territory, the measures which the situation requires (Civil Emergency Measures Ordinance, R.O.N.W.T. 1974, ch. C-5, ss. 7, 9, 11 and 13; Civil Emergency Measures Ordinance, C.O.Y.T. 1976, ch. C-8, ss. 7, 9, 11 and 13).

The territorial Civil Emergency Measures Ordinances pertain to the good government of the Territories. They confer upon the territorial Commissioners the power to take measures to deal with emergencies. Thus, by themselves, they do not contravene the Covenant. Should a breach of the Covenant occur, it would result from measures taken under the authority of these ordinances. Usually, measures taken under these ordinances have a far more mundane aim than the protection of the "life of the nation". This being the case, ordinary civil emergency measures taken under these ordinances could not, if this were required, be justified under Article 4

of the Covenant. This, however, is not necessary as territorial emergency legislation cannot be used to adopt measures whose purpose would be to restrict the rights and freedoms recognized in the Covenant. The measures taken under this legislation must reflect its aim which is the protection of life and property, not the destruction or limitation of the rights and freedoms recognized in the Covenant. This being the case, any measures whose purposes differ from those of the ordinances under which they were authorized, can be attacked in courts on the ground that they were ultra vires of their enabling legislation. Further, if they abrogated, abridged or infringed upon any of the rights and freedoms recognized in the Canadian Bill of Rights, it could also be argued that these measures were inoperative because they conflicted with the Bill. However, as a rule, measures taken under the Ordinances will not relate to the rights and freedoms recognized in the Covenant and, therefore, will not conflict with it.

However, on occasion, measures taken under these Ordinances may incidentally affect certain rights recognized in the Covenant. In particular, reference should be made to the use of compulsory labour and to restrictions on the liberty of movement. As the Covenant itself provides, many of the rights and freedoms which it recognizes can be restricted for reasons of public order. As the aim of the emergency legislation under discussion is the protection of public order within the Territories, it would seem doubtful that the measures taken under the territorial Civil Emergency Measures Ordinances would conflict with the Covenant.

Article 5:

The civil and political rights recognized in the present Covenant are, in the Territories, sufficiently protected against the activities of any group or person who may wish to destroy or limit them. Thus, as a rule, no overall restrictions on the activities of such groups are required. Nevertheless, in some cases governments must intervene. Thus, the territorial governments have enacted legislation to restrict the right to advocate or practice discrimination. In the Northwest Territories, the Fair Practices Ordinance, R.O.N.W.T. 1974, ch. F-2 prohibits any person from publishing or displaying any notice, sign, symbol, emblem or other representation indicating discrimination, or an intention to discriminate, against any person or any class of persons for any purpose on the basis of race, creed, colour, sex, marital status, nationality, ancestry or place of origin (s. 5). The Ordinance also prohibits discrimination on any of the above-mentioned grounds in matters of employment and services, including apartment accommodation, made available to the public (ss. 3, 4 and 6). In the Yukon, the Fair Practices Ordinance, C.O.Y.T. 1976, ch. F-2 prohibits discrimination or the publication or display of material indicating discrimination, or an intention to discriminate, on the grounds of race, religious creed, colour, ancestry, sex, marital status or ethnic or national origin in matters of employment or services, including accommodation, made available to the public (ss. 3, 4 and 5).

Article 6:

The territorial governments have recognized that every human being has an inherent right to life and that it should be protected. To this effect, they have

taken measures not only to preserve and extend the life of individuals, either by affording them medical aid or by giving them financial assistance, but also to protect their life against wrongdoers and, where this proves impossible, to bring about the discovery, apprehension and punishment of the responsible parties.

In order to help preserve an individual's life, the Commissioners in Council of both the Northwest Territories and of the Yukon have enacted ordinances creating universal systems of hospital and medical insurance (Territorial Hospital Insurance Services Ordinance, R.O.N.W.T. 1974, ch. T-4; Medical Care Ordinance, R.O.N.W.T. 1974, ch. M-9; Hospital Insurance Services Ordinance, C.O.Y.T. 1976, ch. H-3; Health Care Insurance Plan Ordinance, C.O.Y.T. 1976, ch. H-1). Further, in order to protect life in cases where even a doctor would be reluctant to intervene for fear of civil suit, the law in the Territories provides that a medical practitioner, a registered nurse, or any other person is not liable for damages for injuries or death caused by an act or omission on his part in rendering, outside an hospital or any other place having adequate medical facilities and equipment, emergency medical services or first aid assistance, unless it is established that the injuries or death were caused by gross negligence on his part (Emergency Medical Aid Ordinance, O.N.W.T. 1976 (1st session), ch. 3; Emergency Medical Aid Ordinance, C.O.Y.T. 1976, ch. E-3.1). Other programs of the territorial governments, such as social assistance, disabled person's allowances and workmen's compensation, can also be considered, though more tenuously, as part of the state's obligation to protect an individual's life (Senior Citizens Benefits Ordinance, O.N.W.T. 1978 (2nd session), ch. 13; Social Assistance Ordinance, R.O.N.W.T. 1974, ch. S-9; Workers' Compensation Ordinance, O.N.W.T. 1977 (1st session), ch. 7; Rehabilitation Services Ordinance, C.O.Y.T.



1976, ch. R-5; Workmen's Compensation Ordinance, C.O.Y.T. 1976, ch. W-5; Workmen's Compensation Supplementary Benefits Ordinance, C.O.Y.T. 1976, ch. W-6).

Further, in order to afford police protection to the inhabitants of the Northwest Territories and of the Yukon, the governments of both of these Territories have entered into contractual arrangements with the Government of Canada so that the Royal Canadian Mounted Police may carry into effect the laws in force therein. Further, both Territories have Coroners Ordinances which establish a system of territorial coroners to uncover cases of unnatural death so that prosecution, if required, may be taken under the Criminal Code, R.S.C. 1970, ch. C-34 (Coroners Ordinance, R.O.N.W.T. 1974, ch. C-16; Coroners Ordinance, C.O.Y.T. 1976, ch. C-18). Though the territories have sought to reduce the already low number of crimes therein committed by insuring adequate policing of their territory, it is impossible to totally prevent crime. To compensate the victims of violent crimes or, where the need arises, their dependents, the territorial governments have set up programs to compensate the victims of such crimes (Criminal Injuries Compensation Ordinance, R.O.N.W.T. 1974, ch. C-23; Compensation for the Victims of Crime Ordinance, C.O.Y.T. 1976, ch. C-10.1).

#### Article 7:

The use of torture or cruel, inhuman or degrading treatment or punishment as a mean of investigation, punishment or prison discipline is against the policy of the territorial governments. Their use is unknown as a punishment. Punishment for the breach of an ordinance is usually either a fine (which, as a rule, does not exceed \$500.) or imprisonment (which, as a rule, does not exceed six months), or both (Interpretation

Ordinance, R.O.N.W.T. 1974, ch. I-3, ss. 28(1) and 31; Interpretation Ordinance, C.O.Y.T. 1976, ch. I-3, ss. 26(1) and 29; Criminal Code, R.S.C. 1970, ch. C-34, s. 722(1)). Similarly, torture and cruel, inhuman or degrading treatment or punishment are not used as tools of prison discipline. The territorial corrections systems seek to provide for the safe custody and detention of inmates with a view to their rehabilitation and reject the use of unnecessary force (Corrections Ordinance, R.O.N.W.T. 1974, ch. C-18, ss. 3(2)(c) and (d), 17, 18 and 25; Corrections Regulations, Commissioner's Order (Yukon) 1973/161, ss. 3(1)(a), 47, 53, 54, 55 and 65). In this context, it should be mentioned that no medical or scientific experimentation is practiced on individuals in the territorial corrections systems.

It should be mentioned that the Territories have not legislated with respect to methods of police investigation. Such legislation, however, is not required as the Territories are policed exclusively by the Royal Mounted Police. The Force's constitutive Act provides that "every member who is cruel, harsh or unnecessarily violent to any prisoner or other person" is guilty of a major service offence and is liable to imprisonment not exceeding one year, or to any other lesser penalty provided for by the said Act (Royal Canadian Mounted Police Act, R.S.C. 1970, ch. R-9, ss. 25(2) and 36(1) and (3)). It should, further, be noted that a service offence is an infraction distinct from, and in addition to, one which might result from a breach of the Criminal Code, R.S.C. 1970, ch. C-34.

Additional protection is also conferred upon the residents of the Territories by the Canadian Bill of Rights. Under section 2(b) of that Bill, the courts have the power

to declare inoperative any territorial ordinance which they construe as imposing or authorizing the imposition of any cruel and unusual treatment or punishment.

Finally the common law, as it applies to the Territories, provides that any person who has been subjected to torture or to cruel, inhuman or degrading treatment or punishment can sue in tort for assault or battery the person who has authorized or inflicted such treatment.

Article 8:

Territorial law complies with this Article.

Paragraphs 1 and 2: As mentioned in the part of the Report of Canada dealing with federal legislation, to hold a person in slavery or servitude constitutes false imprisonment and is a crime (Criminal Code, R.S.C. 1970, ch. C-34, s. 247(2)). Notwithstanding their criminal nature, slavery and servitude are also contrary to public policy. Thus, the territorial supreme courts would afford no assistance to a person who should seek enforcement of an "alleged" right to maintain an individual in a state of slavery or servitude. To the contrary, any individual who is so held is entitled to seek and obtain from a territorial supreme court a writ of habeas corpus ordering the person who holds another to bring the said person before the court so that the legality of his detention may be examined. If the detention is shown to be unlawful, release will be ordered. Further, in addition to any information which he can lay under the Criminal Code, an individual held in slavery or servitude can also sue the person who so held him for false imprisonment.

Paragraph 3: With respect to contracts of service, an employee cannot be forced to work for a particular employer. Under the law of England as introduced in the Territories, courts do not recognize the right of an employer to force, through specific performance or by injunction, a person to work for him against his will. However, although he cannot seek, by specific performance or by injunction, the execution of a contract of service, an employer may sue to recover damages for breach of contract. While neither the equitable relief of specific performance nor that of injunction are available to bind an individual to the service of another, an employer may, in cases of illegal strikes and walkouts, apply for an injunction requiring the return to work of his employees. Any employee who does not want to comply is free to give notice and terminate his employment.

In certain instances, territorial ordinance law allows for "forced or compulsory labour". To this effect mention should be made of:

- a) the territorial Corrections Ordinances which state that inmates in territorial correction facilities are required to do what work they are directed to perform (Corrections Ordinance, R.O.N.W.T. 1974, ch. C-18, s. 19(1)(c); Corrections Ordinance, C.O.Y.T. 1976, ch. C-19.1, s. 8);
- b) the territorial Forest Protection Ordinances which impose upon the owner or occupant of land upon which a fire is burning out of control, or on a person conducting clearing, lumbering or other operations on such land a duty to use every means available to extinguish the fire, and which allow, when necessary, the summoning of all male persons save those in excepted employment, to fight forest fires (Forest Protection Ordinance, R.O.N.W.T.



1974, ch. F-8, ss. 15, 24 and 25; Forest Protection Ordinance, C.O.Y.T. 1976, ch. F-9, ss. 20, 21 and 24);  
c) the territorial Civil Emergency Measures Ordinances under which a territorial Commissioner can require compulsory labour from the territory's residents (Civil Emergency Measures Ordinance, R.O.N.W.T. 1974, ch. C-5, s. 9; Civil Emergency Measures Ordinance, C.O.Y.T. 1976, ch. C-8, s. 9).

Such Ordinances are, however, authorized under the present paragraph and, therefore, do not conflict with the right not to perform forced or compulsory labour.

Article 9:

Paragraph 1: In both Territories, the right to liberty and security of person is protected by the Canadian Bill of Rights. Under sections 1(a) and 2(a) of the said Bill, any territorial law which abrogates, abridges or infringes an individual's right to liberty and security of the person would be construed by the courts as inoperative.

Paragraph 2: This paragraph accords an individual two rights: first, that of being informed, at the time of arrest, of the reasons for arrest; and, secondly, that of being promptly informed of the charges against him. This paragraph is given effect in territorial law by the incorporation of the pertinent provisions of the Criminal Code, R.S.C. 1970, ch. C-34. This is done by way of the territorial Interpretation Ordinances which state that, unless otherwise provided, the provisions of the Criminal Code pertaining to summary convictions shall apply to all summary conviction proceedings

taken under territorial ordinances (Interpretation Ordinance, R.O.N.W.T. 1974, ch. I-3, s. 28(1); Interpretation Ordinance, C.O.Y.T. 1976, ch. I-3, s. 26(1)).

a) Right to be informed of  
the reasons for arrest

As a rule, offences against territorial penal legislation are prosecuted by way of summary conviction and do not generally warrant an arrest. Upon the necessary information being presented to a justice of the peace and accepted, a summons, briefly setting out the offence with respect to which the accused is charged and requiring him to appear in court at a specified time, is issued to the accused. However, if a justice of the peace feels that it is in the public interest, a warrant may be issued instead of a summons. This warrant, like a summons, briefly sets out the offence with which the accused is charged. Further, in circumstances where a summons has already been issued, a warrant can later be issued if the circumstances so require. For example, a warrant can be issued where the public interest requires the issuance of a warrant, where service of the summons is proven and the accused has failed to attend court or where it appears that a summons cannot be served because the accused is evading service.

Under section 728(2) of the Criminal Code, when a warrant, instead of a summons, is issued pursuant to an information, a copy of the warrant must be served on the accused upon arrest. In all other cases, the person who executes a warrant need not serve a copy of the warrant on the accused. Rather, under section 29 of the Criminal Code, his duty is, when this is feasible,

- a) to have the warrant with him and to produce it when requested; and

- b) to give notice to the person arrested of the warrant under which he made the arrest or of the reasons for the arrest.

Although, as a rule, a peace officer finding a person committing an offence against a territorial ordinance will not arrest and detain him, he can if he is expressly or implicitly authorized to do so by a territorial ordinance. If a person is arrested without a warrant, the person effecting the arrest has, under common law, the duty to give him notice of the reason for the arrest where such is feasible.

b) Right to be informed of charges

In all cases where a summons or a warrant is issued, the charge against the accused is briefly set out therein so that the accused knows the charges against him before he appears in court. However, when an accused is arrested without a warrant and remains in custody until taken before a justice of the peace,<sup>(1)</sup> official notification of the charge made against him will have to await his appearance before the justice though, as mentioned in the part of this Report pertaining to federal legislation, an individual will usually be aware of these charges before he appears in court.

Paragraph 3: As previously mentioned, proceedings instituted in the Northwest Territories and in the Yukon against individuals charged with offences against territorial legislation are, save where otherwise provided, brought by way of summary conviction and conducted pursuant to the provisions of the Criminal Code, R.S.C. 1970, ch. C-34

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(1) Territorial Court judges, in the Northwest Territories and magistrates, in the Yukon, are ex officio justices of the peace (Territorial Court Ordinance, O.N.W.T. 1978 (2nd session), ch. 16, s. 15; Magistrate's Court Ordinance, C.O.Y.T. 1976, ch. M-1, s. 5.

pertaining to summary convictions (Interpretation Ordinance, R.O.N.W.T. 1974, ch. I-3, s. 28(1); Interpretation Ordinance, C.O.Y.T. 1976, ch. I-3, s. 26(1)).

As a rule, persons accused of contravening territorial ordinances, regulations or municipal by-laws made thereunder, are not arrested; rather, they receive summonses to appear before a justice of the peace or a magistrate, or a ticket.<sup>(1)</sup> However, such persons can sometimes be arrested, with or without a warrant, depending on the circumstances. In practice, any person arrested without warrant shall, unless otherwise released, be brought before a justice of the peace within twenty four hours of his arrest by a peace officer, or, if no justice is available within the above given time period, as soon as possible. If summary conviction proceedings have been initiated against an accused and he is arrested under a warrant, the territorial Interpretation Ordinances ensure, by their incorporation into territorial law of the provisions of the Criminal Code

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- (1) The ticket system is a recent innovation in the law of the Northwest Territories and the Yukon. It aims at streamlining the present summary conviction system by reducing the need for judicial intervention. This is done by allowing individuals accused of a breach of territorial legislation to plead guilty and pay a fine without going through the court process. In the Northwest Territories, the ticket system can apply to any territorial ordinance, to any regulation made under a territorial ordinance or to any municipal by-law which the territorial Commissioner will designate by regulation as being subject to the ticket system. In the Yukon, the ticket system will apply only to municipal by-laws and then only if the Commissioner has approved the use of tickets in respect to any given by-law (Summary Conviction Procedures Ordinance, O.N.W.T. 1978 (1st session), ch. 3; Municipal Ordinance, C.O.Y.T. 1976, ch. M-12, s. 69.1).



pertaining to summary conviction proceedings, that such a person may take advantage of the rights recognized in the present paragraph. These rights, as set forth in Part XIV (ss. 448-462) of the Criminal Code, are incorporated into summary conviction proceedings by section 728(1) of the Code. The pertinent provisions of Part XIV have already been discussed in the section of the present Report dealing with federal legislation.

Paragraph 4: In territorial law, any person illegally arrested or detained can seek a writ of habeas corpus in order to have the legality of his confinement tested. The right to seek a writ of habeas corpus is protected by the Canadian Bill of Rights. Under section 2(c)(iii) of the said Bill, any territorial ordinance which would "deprive a person who has been arrested or detained... of the remedy by way of habeas corpus for the determination of the validity of his detention and for his release if the detention is not lawful" would be inoperative. In this context, reference ought to be made to sections 459.1 and 709 of the Criminal Code, R.S.C. 1970, ch. C-34 which have been incorporated into territorial law by the application of the territorial Interpretation Ordinances. With respect to these sections, reference ought to be had to the comments under Article 9, paragraph 4 in the part of this Report pertaining to federal legislation.

Paragraph 5: In English common law as it applies to the Territories, anyone who, without lawful justification, arrests, or procures the arrest of a person, commits the tort of false imprisonment. The person so arrested has the right to sue for damages in the civil courts. However, when a person is arrested under the authority of a judicial

order or judgment obtained by means of judicial proceedings instituted maliciously and without cause, no action for false imprisonment lies against the person who has procured this imprisonment. This is because there can be no false imprisonment when arrest is made under a valid court order. Nevertheless, an action based on malicious prosecution, or other malicious abuse of legal process, might lie against the person who instituted or continued these proceedings if they proved unsuccessful.

Article 10:

The rights set forth in this Article are afforded recognition and protection in territorial law.

Paragraph 1: In the Northwest Territories and in the Yukon, all persons deprived of their liberty, be they detained pending trial and judgments, or be they in detention after final determination of their case, must be treated with humanity and with respect for the inherent dignity of the human being. If they are held by the Royal Canadian Mounted Police, members of the Force have a duty not to mistreat prisoners in their custody (Royal Canadian Mounted Police Act, R.S.C. 1970, ch. R-9, s. 25(1)). As for persons held in the territorial prison systems, the territorial legislation governing the operation of prisons provides for the safe custody of persons detained therein. The Corrections Ordinances and the regulations made thereunder, in both the Northwest Territories and the Yukon, require that measures be taken to ensure the physical welfare of prisoners and to protect their physical and mental health. This legislation also provides that correctional staff

maintain order and discipline with firmness, but without the use of unnecessary or excessive force. In both Territories, the need for prison discipline is met by disciplinary penalties such as reprimand or forfeiture of remission. Amongst the penalties provided for a breach of a disciplinary rule is separate confinement; however, an inmate cannot be held in separate confinement for more than fifteen days with respect to any particular breach. In this context, it should be noted that prison discipline is not viewed as encompassing physical restraint, save where required to prevent an inmate from injuring himself or when an inmate is being transported (Corrections Ordinance, R.O.N.W.T. 1974, ch. C-18, ss. 3(2)(c), 16, 17 and 18-25; Corrections Services Regulations, Northwest Territories 196-73, ss. 6, 7(b) and (c), 8, 17, 20-24, 26 and 57-60; Corrections Ordinance, C.O.Y.T. 1976, ch. C-19.1, s. 9; Corrections Regulations, Commissioner's Order (Yukon) 1973/161, ss. 3(1)(a), 6(2), 20-34, 36, 46, 47, 53-55 and 65).

Any inmate found guilty of a breach of prison discipline can appeal this decision. In the Northwest Territories, the Corrections Ordinance allows appeals from any decision of an institution's Disciplinary Board to the Chief of Corrections (Corrections Ordinance, R.O.N.W.T. 1974, ch. C-18, ss. 21-22). Should this appeal prove unsuccessful, there is a right of appeal to the courts. In the Yukon, no administrative procedure is provided to challenge a decision of the superintendent of a correctional institution; however, an inmate still has the right to appeal any decision of the superintendent to the courts.

In addition to any recourse available under the Criminal Code, R.S.C. 1970, ch. C-34, a prisoner in a place

of confinement operated by the Royal Canadian Mounted Police who is mistreated by a member of the RCMP may complain to the Force and the officer responsible can be brought before a service tribunal to answer the charge. This is a major service offence, and if found guilty, that person is liable to punishment ranging from a reprimand to imprisonment for a term not exceeding one year (Royal Canadian Mounted Police Act, R.S.C. 1970, ch. R-9, ss. 25(1) and 36(1)). Similarly, any correctional officer who mistreats an inmate of a territorial correctional institution can be suspended from his duties, or even dismissed. If a charge is brought against him under the penal provisions of a territorial Corrections Ordinance, he can be punished by a fine not exceeding \$500. or by imprisonment not exceeding three months (six in the Yukon), or both (Corrections Ordinance, R.O.N.W.T. 1974, ch. C-18, s. 53; Corrections Services Regulations, Northwest Territories 196-73, s. 30; Corrections Ordinance, C.O.Y.T. 1976, ch. C-19.1, ss. 33 and 35; Corrections Regulations, Commissioner's Order (Yukon) 1973/161, s. 5).

Any person held in a territorial detention facility may, inter alia, complain to the territorial Director of Correctional Services, to the territorial Commissioner, to any member of the territorial Council, or to any Member of Parliament. Upon receiving a complaint, the Commissioner may appoint persons to investigate this complaint: these persons have complete access to any correctional centre (Corrections Ordinance, R.O.N.W.T. 1974, ch. C-18, s. 50; Corrections Ordinance, C.O.Y.T. 1976, ch. C-19.1, s. 31).

Paragraph 2: With respect to persons arrested and held pending trial and judgment, a distinction must be made between juvenile and adult detainees.



In Canada, the detention pending trial and sentence of a juvenile is, like that of any other person, the exception rather than the rule. Thus, if a child under the age of sixteen is arrested in either the Northwest Territories or the Yukon, he will usually be released pending trial. Should this not happen, Parliament has provided that this child will be kept in custody separate from older persons charged with offences and separate from all other persons undergoing sentence of imprisonment (Juvenile Delinquents Act, R.S.C. 1970, ch. J-3, ss. 13 and 14; Prisons and Reformatories Act, R.S.C. 1970, ch. P-21, s. 10).<sup>(1)</sup> The territorial governments are bound by the federal legislation, and have taken administrative measures to put it in effect. In addition, they have, in their legislation, recognized their obligation to supply separate confinement to persons under the age of sixteen. Thus, in the Northwest Territories, the Magistrate's Court Ordinance provides that "the Commissioner may establish... detention homes, or designate any place a detention home within the meaning of the Juvenile Delinquents Act, for the detention of children pending the disposition of their case" in Juvenile Court (Magistrate's Court Ordinance, R.O.N.W.T. 1974, ch. M-1, s. 29(1)). In the Yukon, any child being held before sentence is to be placed

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(1) In both the Northwest Territories and the Yukon, no proclamation was issued extending the age of applicability of the Juvenile Delinquents Act, R.S.C. 1970, ch. J-3. Therefore, in the Territories, the Act applies only to children who, when they contravened a federal, territorial or municipal enactment, were under the age of sixteen.

by the Director of Corrections in a facility suitable for the detention of children. Further, the Corrections Regulations provide that "any person defined as a juvenile under the Juvenile Delinquents Act who is committed in custody in a gaol awaiting sentence shall be kept in custody separate from older persons charged with criminal offences and separate from all persons undergoing sentence of imprisonment" (Corrections Ordinance, C.O.Y.T. 1976, ch. C-19.1, ss. 23-25; Corrections Regulations, Commissioner's Order (Yukon) 1973/161, s. 48).

While the Juvenile Delinquents Act is important in the fight against juvenile delinquency, Parliament has not intended that it should be the sole instrument used to combat it. Thus section 39 of the Juvenile Delinquents Act clearly indicates that this Act does not repeal, or override, provincial or territorial child protection legislation. In the Northwest Territories and in the Yukon, the territorial governments have enacted Child Welfare Ordinances. Under these, any child, under the age of sixteen in the Northwest Territories and under the age of eighteen in the Yukon, who is deemed to be in need of protection because he is not being properly taken care of or supervised, or because he is being subjected to bad influences<sup>(1)</sup> can be apprehended and brought before a territorial judge (in the Yukon, a magistrate), a Juvenile Court judge or a justice of the peace (henceforth to be collectively called justice). A child who is held or brought before a justice for inquiry under a territorial Child Welfare Ordinance is not placed or allowed to remain with any adult prisoner in any lock-up

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(1) For more detail as to the scope of application of the territorial Child Welfare Ordinances, see Article 14, paragraph 4.

or police cell used for ordinary criminals or persons charged with crimes (Child Welfare Ordinance, R.O.N.W.T. 1974, ch. C-3, ss. 2, 14(1), 16(1) and (2) and 45; Child Welfare Ordinance, C.O.Y.T. 1976, ch. C-4, ss. 2, 6, 7 and 36).

The present paragraph also affords to all adult detainees the right to be held separate from convicted persons and to be treated commensurate to their status of unconvicted persons. There are no provisions in territorial law to this effect. However, in practice, this right is afforded recognition, save where otherwise impossible to do so.

It should, however, be indicated that the special conditions prevailing in Canada's northern areas, e.g. a population of less than 70,000 dispersed over more than a third of the country's surface, may sometimes result in situations where the Territories cannot meet their obligations under this paragraph. Section 44(2) of the Northwest Territories Act, R.S.C. 1970, ch. N-22 and section 44(2) of the Yukon Act, R.S.C. 1970, ch. Y-2 indicate that where it is impossible or inconvenient, by reason of absence or remoteness, to confine persons charged under federal or territorial law, or sentenced thereunder to a term of imprisonment not exceeding two years, in a territorial prison, gaol or lock-up, such persons may be kept in a place of confinement managed by the Royal Canadian Mounted Police. In such cases, it may be impossible to afford to an accused the kind of separate confinement which the present Article of the Covenant states to be his right.

Paragraph 3: In Canada, the territorial governments have jurisdiction over all juveniles sentenced under the Juvenile Delinquents Act, R.S.C. 1970, ch. J-3 as well

as over all persons sentenced under federal or territorial law to imprisonment for less than two years.

In the Territories, juveniles are usually dealt with under the Juvenile Delinquents Act, although in certain instances their cases may be dealt with under a territorial Child Welfare Ordinance (Child Welfare Ordinance, R.O.N.W.T. 1974, ch. C-3; Child Welfare Ordinance, C.O.Y.T. 1976, ch. C-4).

With respect to children under the age of sixteen (eighteen in the Yukon) deemed to be in need of protection and dealt with under the Child Welfare Ordinance of a Territory, the most drastic measure contemplated by such legislation is, in the Northwest Territories, the committal of a child to the care and custody of the Superintendent of Child Welfare or of a children's aid society and, in the Yukon, placement under the protective care of the Director of Child Welfare. When a child is committed, on a permanent or temporary basis, to the care and custody of the Superintendent or Director of Child Welfare, or of a children's aid society, he is to be placed in an institution where he can be protected and, if need be, his rehabilitation sought. In the case of children in the care and custody of the Superintendent or Director of Child Welfare, these institutions are foster homes, or any other institution which he deems to be suitable having regard to the best interests and welfare of the children; with respect to children committed to the care of children's aid society, these institutions are foster homes. Any child committed on a permanent basis to the care and custody of the Superintendent or Director of Child Welfare or to that of a children's aid society, can be adopted. However, with delinquent children, adoption is the exception, rather than the rule (Child Welfare Ordinance,



R.O.N.W.T. 1974, ch. C-3, ss. 2(d) and (f), 19(2)(d) and (5), 21, 24(1) and (2), 25, 26 and 87; Child Welfare Ordinance, C.O.Y.T. 1976, ch. C-4, ss. 2 (child and foster home), 11(2)(c) and (3), 15, 16(1) and 71).

As previously mentioned, juveniles accused of contravening federal or territorial legislation are usually dealt with under the Juvenile Delinquents Act. Parliament has recognized in sections 20(1)(i), 26(1) and 38 of this Act that all children under the age of sixteen imprisoned under the said Act are to be confined separately from adults and are to be held in industrial schools the object of which is to reform and rehabilitate them. However, even when a child is brought to trial under the provisions of the Juvenile Delinquents Act, Parliament has not excluded the application of territorial law. Thus, section 39 provides that a child found guilty of having committed any offence, save an offence which under the provisions of the Criminal Code is an indictable offence, may be dealt with, either under the provisions of a territorial Child Welfare Ordinance or under the Juvenile Delinquents Act as may be deemed, by the Juvenile Court judge presiding the case, to be in the best interests of the child. Further, section 21 provides that any juvenile who, after sentencing, is committed by a juvenile court, pursuant to s. 20(1) of the Juvenile Delinquents Act, to the care of a children's aid society, or a territorial Superintendent or Director of Child Welfare, or to the custody of an industrial school may be dealt with under territorial legislation if the secretary of a Territory so desires. This usually means that the child is dealt with under a territorial Child Welfare Ordinance. Should a child be dealt with under territorial legislation by virtue of sections 39 or 21 of the Juvenile Delinquents Act, that Act will no longer apply in respect to the offence for which he had been brought before a Juvenile Court.

In both Territories, legislation was enacted to give effect to the aims of the Juvenile Delinquents Act. In the Northwest Territories, juvenile delinquents are dealt with under the Child Welfare Ordinance, R.O.N.W.T. 1974, ch. C-3 and the Magistrate's Court Ordinance, R.O.N.W.T. 1974, ch. M-1, s. 30. Under section 19(6) of the Child Welfare Ordinance, where an order is made under section 20 of the Juvenile Delinquents Act committing a child to the care and custody of a probation officer, the Superintendent of Child Welfare, or an industrial school, the child is deemed to be committed to the care and custody of the Superintendent for a period not exceeding one year. Children in the care and custody of the Superintendent must be placed in foster homes or such other places, including an industrial school, which the Superintendent deems suitable having regard to their interest and welfare (s. 24(1)). Also, once a child is committed to his care, the Superintendent may ask a judge to make custody permanent and if, in the judge's view, this is in the best interest of the child, the application may be granted (s. 21).

In the Yukon, a juvenile delinquent sent to industrial school under section 20(1)(i) of the Juvenile Delinquents Act shall be held in an institution set up and administered under s. 20 of the territorial Corrections Ordinance, C.O.Y.T. 1976, ch. C-19.1. Should a juvenile delinquent be committed to the care and custody of the Director of Child Welfare under section 20(1)(h) of the Juvenile Delinquents Act, the Child Welfare Ordinance, C.O.Y.T. 1976, ch. C-4 will apply. Under this Ordinance, the Director must place the child in a foster home or other place he deems suitable (s. 15(1)). The Director is empowered to establish and operate group homes, or other types of child care facilities, for the special care of children who are under his protective care, or to make agreements with persons to operate such homes (s. 23).

Having examined the treatment afforded juveniles detained under federal and territorial child protection legislation, let us now consider the treatment afforded to persons held in territorial correctional institutions. As already mentioned, persons held in these institutions must be treated with humanity and with the respect due to the inherent dignity of the human person (see supra, Article 7 and Article 10, par. 1). In addition, one of the basic aims of the territorial correctional systems is the reformation and social rehabilitation of persons therein held, and this whether these persons are held for offences against federal or territorial law (Corrections Ordinance, R.O.N.W.T. 1974, ch. C-18, s. 3(2); Corrections Regulations, Commissioner's Order (Yukon) 1973/161, s. 3(1)(a)). However, while the territorial correctional systems aim at the rehabilitation of all detainees, a distinction must be made between persons sentenced for breaches of territorial law and those sentenced for breaches of federal law. In the former case, means of rehabilitation are found mostly in territorial law while in the latter they are found in both federal and territorial law. In the Northwest Territories, the principal means used to rehabilitate persons sentenced for a breach of territorial law are supervision, treatment and training given to inmates in correctional institutions. As well, rehabilitation is sought through conditional and absolute discharges, probation, sentence remission, outside correctional programs, parole, and after release care (Corrections Ordinance, R.O.N.W.T. 1974, ch. C-18, s. 3(2); ss. 7-11 (probation); s. 24 (remission); ss. 33-38 (correctional programs); ss. 39-47 (parole); ss. 48-49 (aftercare); Criminal Code, R.S.C. 1970, ch. C-34, ss. 662-666 (judicial discharge and probation) which because of s. 28(1) of the Interpretation Ordinance, R.O.N.W.T. 1974, ch. I-3, applies to all territorial offences save as otherwise provided. In

the Yukon, the means of rehabilitation are basically similar, save that territorial law does not provide for remission of sentences or release through parole of persons sentenced for an offence against a territorial ordinance (Corrections Ordinance, C.O.Y.T. 1976, ch. C-19.1, ss. 12-15 (work release programs); ss. 16-18 (probation); Corrections Regulations, Commissioner's Order (Yukon) 1973/161, s. 77 (after-care); Criminal Code, R.S.C. 1970, ch. C-34, ss. 662-666 (judicial discharge and probation) as incorporated into territorial law, save as otherwise provided, by the Interpretation Ordinance, C.O.Y.T. 1976, ch. I-3, s. 26(1)).

However, it should be noted that the territorial correctional authorities do grant remission, applying for that purpose the federal Prisons and Reformatories Act which they view as conferring a right to remission to all prisoners held in the territory's correctional institutions (Prisons and Reformatories Act, R.S.C. 1970, ch. P-21, s. 2 (prisoner); ss. 6-7. See also, Corrections Regulations, ss. 2(h), 61(f) and 63(a)). As for persons sentenced for a breach of a federal enactment and held in territorial correctional institutions, their rehabilitation is governed by the same rules for all other detainees, save that in their case judicial discharge and probation, parole, remission and leaves of absence are granted under federal legislation (Criminal Code, ss. 662-666; Parole Act, R.S.C. 1970, ch. P-2, s. 8(1)(b); Prisons and Reformatories Act, ss. 5-9).

#### Article 11:

In the Territories, an individual cannot be imprisoned merely on the ground of inability to fulfil a contractual obligation (Debtors' Act, 1869, 32 & 33 Victoria ch. 62, ss. 4-6 (U.K.) as incorporated into territorial law by the Northwest Territories Act, R.S.C. 1970, ch. N-22, s. 18(1); Collection Ordinance, C.O.Y.T. 1976, ch. C-9, ss. 3, 11, 12 and 14).



Article 12:

One of the basic tenets of Canadian law is that everything which is not prohibited is allowed. Thus, though freedom of movement is not expressly recognized in territorial law, it nevertheless exists. Hence, in the Territories, an individual is free to go where he wishes and to choose his place of residence. This right, however, is not absolute, as certain restrictions to an individual's freedom of movement can be found in territorial law. For example, those found in the territorial Forest Protection Ordinances which allow certain areas where life and property are endangered through hazardous conditions of vegetation, or by the occurrence or spread of fire, to be declared off-limits; or those attached, in the Northwest Territories, to parole or, in the Yukon, to a work release program (Forest Protection Ordinance, R.O.N.W.T. 1974, ch. F-8, ss. 6(1)(e) and 16; Corrections Ordinance, R.O.N.W.T. 1974, ch. C-18, s. 45 (see also ss. 43(1) and 47); Forest Protection Ordinance, C.O.Y.T. 1976, ch. F-9, s. 15; Corrections Ordinance, C.O.Y.T. 1976, ch. C-19.1, ss. 12-14; Corrections Regulations, Commissioner's Order (Yukon) 1973/161, s. 91). These restrictions are justified under this Article's third paragraph.

Article 13:

Enforcement of the rights recognized in this Article does not fall within the jurisdiction of the Territories.

Article 14:

Paragraph 1: Equality before the courts is one of the basic tenets of the Canadian legal system. In the Northwest Territories and in the Yukon, all persons who are before the courts are dealt with equally and impartially

according to law. Territorial law cannot abrogate, abridge or infringe this right without running afoul of section 1(b) of the Canadian Bill of Rights which guarantees the right to equality before the law and of section 2(e) which guarantees the right to a fair hearing and, as a result, being held to be inoperative by the Courts.

Another such tenet is the right to a public hearing. In Canada, all trials are open to the public save when a judge deems that the administration of justice would be rendered impracticable by the presence of the public, or when a statute excludes the public from a particular proceeding. In the Territories, when a corporation or an individual aged sixteen years or more is accused of having contravened a territorial penal ordinance, a court may exclude the public or any member thereof, from all or part of the proceedings if it is of the opinion that it is the interest of public morals, the maintenance of order, or the administration of justice to do so (Criminal Code, R.S.C. 1970, ch. C-34, s. 442(1) as incorporated into the law of the Northwest Territories by the Interpretation Ordinance, R.O.N.W.T. 1974, ch. I-3, s. 28(1) and into the law of the Yukon by the Interpretation Ordinance, C.O.Y.T. 1976, ch. I-3, s. 26(1)). Similarly, in matters pertaining to the protection of children, the territorial Child Welfare Ordinances provide for private hearings; these ordinances also provide for such hearings in matters relating to the maintenance of children born out of wedlock and in adoption proceedings (Child Welfare Ordinance, R.O.N.W.T. 1974, ch. C-3, s. 105(1); Child Welfare Ordinance, C.O.Y.T. 1976, ch. C-4, s. 94(1)). Further, unless restrictions on their publication are imposed by law, all judgments rendered by a court, notwithstanding the fact that they are copyrighted to the Crown in right of Canada, are, in practice, public and can be published and commented upon.

Finally, it should be noted that the territorial governments have taken measures to ensure the competence, independence and impartiality of territorially appointed judges. In both the Northwest Territories and the Yukon, there are three territorial Courts: the Territorial Court (Northwest Territories) or Magistrate's Court (Yukon), the Supreme Court and the Court of Appeal. The latter two, although constituted under territorial law, are superior courts and, their members are appointed by the federal government. The Territorial and Magistrate's Courts are courts of inferior jurisdiction. This being the case, it is within the scope of a territorial government's jurisdiction to make appointments to them. In both Territories, legislation exists which aims at ensuring the competence, independence and impartiality of judges and magistrates appointed by a territorial Commissioner. This legislation sets out the qualifications required for appointment to the territorial bench, guarantees judicial tenure, governs non-judicial activities of territorial "judges" and provides for removal on the ground of misbehavior or inability (Territorial Court Ordinance, O.N.W.T. 1978 (2nd session), ch. 16, ss. 4-7; s. 9; ss. 13-14; s. 31; Magistrate's Court Ordinance, C.O.Y.T. 1976, ch. M-1, ss. 9-11; Public Service Commission Ordinance, C.O.Y.T. 1976, ch. P-10.1, ss. 123 and 124). Finally, it should be mentioned that in the territories, the justices of the peace appointed by the territorial commissioners play an important role in the administration of federal and territorial penal law. They, like judges, must be competent, independent and impartial. If they are not, the territorial commissioners can dismiss them as they hold office during pleasure (Justice of the Peace Ordinance, R.O.N.W.T. 1974, ch. J-3, s. 3; Justice of the Peace Ordinance, C.O.Y.T. 1976, ch. J-3, s. 3).

Paragraph 2: In both the Northwest Territories and the Yukon, the territorial Interpretation Ordinances incorporate into the law of the territory the provisions of

the Criminal Code, R.S.C. 1970, ch. C-34 dealing with summary conviction proceedings (Interpretation Ordinance, R.O.N.W.T. 1974, ch. I-3, s. 28(1); Interpretation Ordinance, C.O.Y.T. 1976, ch. I-3, s. 26(1)). One of these provisions is section 5(1)(a) of the Criminal Code. This section states that "where an enactment creates an offence and authorizes a punishment to be imposed in respect thereof, ... a person shall be deemed not to be guilty of that offence until he is convicted thereof".

Further in both Territories, territorial common law recognizes that any person charged with an offence against a territorial ordinance is to be presumed innocent until his guilt is established, by the prosecution, beyond a reasonable doubt. If the prosecution fails in this, either because the evidence introduced is insufficient, or because the accused's defence has created a reasonable doubt as to guilt, the accused is to be acquitted. The burden of proof rests with the prosecution. In common law it must prove the existence of both actus reus and mens rea in order to bring about the conviction of the accused; however, offences against territorial ordinances are usually strict liability infractions requiring no proof of mens rea. Further, proof of certain facts or excuses may sometimes be placed on the accused. Thus an individual charged under the Northwest Territories' Fur Export Ordinance with an offence pertaining to the export of furs, must prove that any pelts, skins, or parts thereof found in his possession were not caught in the Territories, or that a permit was issued for their export (Fur Export Ordinance, R.O.N.W.T. 1974, ch. F-11, s. 10). In the Yukon, a similar onus can be found in section 13 of the territorial Fur Export Ordinance, C.O.Y.T. 1976, ch. F-12.

Paragraph 3: Most of the rights recognized in the present paragraph are part of the law of the Territories.



Sub-paragraph a: Territorial law recognizes the right of any person who contravenes a territorial ordinance to be informed promptly, and in detail, of the nature and cause of the charge against him (see supra, Article 9, paragraph 2). In addition, it should be mentioned that section 2(c)(i) of the Canadian Bill of Rights renders inoperative any part of territorial law which would "deprive a person who has been arrested or detained... of the right to be informed promptly of the reason for his arrest or detention".

Sub-paragraph b: Section 737(1) of the Criminal Code, R.S.C. 1970, ch. C-34 which has been incorporated into the law of the Northwest Territories and the Yukon by the territorial Interpretation Ordinances accords any defendant the right to a full defence (Interpretation Ordinance, R.O.N.W.T. 1974, ch. I-3, s. 28(1); Interpretation Ordinance, C.O.Y.T. 1976, ch. I-3, s. 26(1)). To be effective, this right implies that the defendant, or counsel of his choosing, should have adequate time and facilities to prepare a defence. This principle was recognized in R. v. Talbot, (1966) 3 C.C.C. 28. Finally it should be mentioned that section 2(c)(ii) of the Canadian Bill of Rights would render inoperative any part of territorial common or statute law which would "deprive any person who has been arrested or detained... of the right to retain and instruct counsel without delay".

Sub-paragraph c: In the Territories, no information shall be laid or proceedings instituted more than six months after the time when the subject matter of the proceedings arose, save if a territorial ordinance provides otherwise

(Interpretation Ordinance, R.O.N.W.T. 1974, ch. I-3, s. 28(2); Interpretation Ordinance, C.O.Y.T. 1976, ch. I-3, s. 26(2)). However, while territorial law recognizes that, as a rule, no proceedings be instituted against a person accused of contravening a territorial ordinance more than six months after the date of this occurrence, it does not officially accord the accused the right to be tried without delay. There is no territorial legislation on this subject. Recently the Supreme Court of Canada in Rourke v. The Queen, (1977) 35 C.C.C. (2d) 129 held that excessive delay in prosecution does not constitute an abuse of process which would allow a court to stay proceedings indefinitely. It should, however, be noted that offences against territorial ordinances are dealt with in the most expeditious way known in Canada: summary conviction proceedings. This avoids delays.

Sub-paragraph d: The right of an accused to be tried in his presence and to defend himself in person, or through counsel, is recognized in sections 735(2) and 737(2) of the Criminal Code which have been incorporated into the law of the Territories by the territorial Interpretation Ordinances. However, this right is not absolute. Sections 431.1 and 738(3) of the Criminal Code which have been incorporated into the law of the Territories by the territorial Interpretation Ordinances would allow for an accused to be tried in his absence, though not necessarily without counsel if he had retained counsel who continued to act on his behalf in the proceedings, if he failed to appear at the time and place appointed for his trial after having been issued an appearance notice later confirmed by a justice, or served a summons, within a reasonable time before this trial or again if he had failed to appear for the resumption of his trial after an adjournment or had otherwise absconded during its course.

In the Yukon, persons charged with having committed offences against federal statutes, or territorial ordinances, and who are unable to pay part or all of their legal fees can obtain legal aid. However, it should be noted that if an individual who receives legal aid is able to pay a portion of the cost of such aid, he must pay a partial charge (Legal Aid Ordinance, C.O.Y.T. 1976 ch. L-3.1, ss. 3, 5(1) and 9). A similar program exists in the Northwest Territories. There it is based not on legislation, but on an agreement between the Government of Canada and that of the Territory.

In summary conviction matters, when an appeal on the record or de novo is brought to a territorial Supreme Court exercising appellate jurisdiction, or when an appeal is taken to a territorial Court of Appeal, such Court may at any time "assign counsel to act on behalf of an accused who is a party to an appeal or to proceedings preliminary or incidental to an appeal where, in the opinion of the Court or judge, it appears desirable in the interests of justice that the accused should have legal aid and where it appears that the accused has not sufficient means to obtain that aid" (Criminal Code, ss. 611, 755(1) and 771(2) which sections are incorporated into the law of the Territories by the territorial Interpretation Ordinances).

Sub-paragraph e: The right to examine or have examined by counsel the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him is accorded to any accused in section 737(1) and (2) and in sections 625 to 643 of the Criminal Code which are incorporated into territorial law by the territorial Interpretation Ordinances.

Sub-paragraph f: In both the Northwest Territories and the Yukon, if a person accused of a crime cannot understand English he may ask for an interpreter. For the reasons given under the present sub-paragraph of Article 14 in the part of Canada's Report pertaining to federal law, the court must provide one.

Mention ought also to be made that section 2(g) of the Canadian Bill of Rights guarantees the right to an interpreter before a court, commission, board or other tribunal to any party, or witness. Under the Bill, any law of the territories which would deprive a party, or witness, of this right would be inoperative.

Sub-paragraph g: In the Yukon, the Evidence Ordinance recognizes the right of any accused not to be compelled to testify against himself (Evidence Ordinance, C.O.Y.T. 1976, ch. E-6, s. 4(2)). This is not the case in the Northwest Territories where the accused can be compelled to testify against himself (Evidence Ordinance, R.O.N.W.T. 1974, ch. E-4, s. 4). However, while an accused is compellable as a witness for the prosecution, it is rare for the latter to call him as the bench would frown upon the exercise of this exceptional right (McWilliams, Canadian Criminal Evidence, p. 561).

Paragraph 4: In the Territories, proceedings against any child under the age of sixteen accused of having committed an offence against a federal, territorial or municipal enactment are generally initiated under the Juvenile Delinquents Act, R.S.C. 1970, ch. J-3. However, where the act complained of is, under the provisions of the Criminal Code or otherwise, an indictable offence and the accused child is apparently, or actually, over the age of fourteen, the Juvenile Court may, if it is of the opinion that the good of the child and the



interests of the community demand it, order the child to be proceeded against by indictment in the ordinary courts in accordance with the provisions of the Criminal Code (ss. 4, 5, 8 and 9).

When proceedings are conducted under the Juvenile Delinquents Act, resort can be had to territorial legislation. Under section 39 of the Juvenile Delinquents Act, a Juvenile Court can, after it has found a child guilty of having committed any act, save an act which is, under the provisions of the Criminal Code, an indictable offence, order the case to be dealt with either under territorial child protection legislation, or under the Juvenile Delinquents Act. Similarly section 21 of the Juvenile Delinquents Act provides that any juvenile committed to the charge of a children's aid society, a territorial superintendent of child welfare, or an industrial school may be dealt with under territorial legislation if the secretary of a territory so orders. In this respect, reference ought to be made to the part of the territorial Report where Article 10, paragraph 3 of the Covenant is discussed and in which the inter-relationship between the Juvenile Delinquents Act and the territorial Child Welfare Ordinances is examined.

As previously mentioned, the territorial Commissioners in Council have enacted legislation to protect children. Although the Juvenile Delinquents Act is the principal instrument used to deal with breaches of law by juveniles, the territorial Child Welfare Ordinances do have an important role to play in the fight against delinquency and its causes. In the Northwest Territories, section 14(1) of the Child Welfare Ordinance, R.O.N.W.T. 1974, ch. C-3 allows proceedings aimed at the protection of any child

under the age of sixteen to be instituted when

- "(a) he is an orphan who is not being properly cared for or is brought, with the consent of the person in whose charge he is, before a justice to be dealt with under this Part;
- (b) he has been born out of wedlock and his mother has delivered him to the Superintendent for adoption;
- (c) he is deserted by the person in whose charge he is, or that person has died or is unable to care properly for him;
- (d) the person in whose charge he is cannot, by reason of disease, infirmity, misfortune, incompetence, imprisonment or any combination thereof, care properly for him;
- (e) his home, by reason of neglect, cruelty or depravity on the part of the person in whose charge he is, is an unfit and improper place for him;
- (f) he is found associating with an unfit or improper person;
- (g) he is found begging in a public place;
- (h) with the consent or connivance of the person in whose charge he is, he commits any act that renders him liable to a penalty under any Ordinance, Act of the Parliament of Canada or municipal by-law;
- (i) he is delinquent or incorrigible by reason of the inadequacy of the control exercised by the person in whose charge he is, or he is being allowed to grow up under circumstances tending to make him dissolute;
- (j) he habitually absents himself from the home of the person in whose charge he is without sufficient cause;
- (k) the person in whose charge he is neglects or refuses to provide or secure

proper medical, surgical or other remedial care or treatment necessary for his health or well-being, or refuses to permit such care or treatment to be supplied to the child when it is recommended by a duly qualified medical practitioner; or

- (1) he is deprived of affection by the person in whose charge he is to a degree that, on the evidence of a psychiatrist, is sufficient to endanger his emotional and mental development."

Similarly in the Yukon, section 6 of the Child Welfare Ordinance, C.O.Y.T. 1976, ch. C-4 allows proceedings for the protection of any child under the age of eighteen to be instituted when:

- "(a) he is an orphan who is not being properly cared for;
- (b) he is deserted by the person in whose charge he is;
- (c) the person in whose charge he is cannot care properly for him;
- (d) he is brought, with the consent of the person in whose charge he is, before a justice to be dealt with under this Part;
- (e) he is under the age of twelve years and is frequently left by the person in whose charge he is without care and supervision of an older person or when such older person fails to give him proper and adequate care and supervision;
- (f) his home by reason of neglect or depravity on the part of the person in whose charge he is, is an unfit or improper place for him;
- (g) he is found associating with an unfit or improper person who is not his parent;
- (h) he is found begging in any street, house or place of public resort, whether actually begging or under the pretext of selling

- or offering anything for sale or is found loitering in a public place;
- (i) with the consent or connivance of the person in whose charge he is, he commits any act that renders him liable to a penalty under any ordinance, Act of Parliament of Canada or municipal by-law;
  - (j) by reason of the inadequacy of the control exercised by the person in whose charge he is, he is being allowed to grow up under circumstances tending to make him idle, dissolute, delinquent or incorrigible, or without a proper education;
  - (k) he habitually absents himself from the home of the person in whose charge he is, or from school when he is within the compulsory school attendance age, without sufficient cause;
  - (l) the person in whose charge he is neglects or refuses to provide or secure proper medical, surgical or other remedial care or treatment for his health or well being, or refuses to permit such care or treatment to be supplied to the child when it is recommended by a medical practitioner;
  - (m) he is deprived of affection by the person in whose charge he is, to a degree that is sufficient to hinder his emotional and mental development;
  - (n) he is by reason of the ill-treatment, cruelty, frequent personal injury, grave misconduct or frequent intemperance of or by the person in whose charge he is, in danger of loss of life, health or morality;
  - (o) the person in whose charge he is, is incapable of exercising or unwilling to exercise proper parental control;
  - (p) he is a child born out of wedlock whose mother consents to him being brought



before a justice for the purpose of transferring his guardianship to the Director;

- (q) his parents or only parent is undergoing imprisonment or is a patient in a hospital for the mentally ill, a tuberculosis sanatorium or rehabilitation centre for physical restoration of the disabled."

When such proceedings are instituted, any justice who determines that a child is in need of protection may take such action as allowed by law, and which he deems to be in the best interest of the child, to protect him. In the Northwest Territories, he may, under section 19(2) and (5) of the Child Welfare Ordinance, make an order which provides that

- "(a) the case be adjourned to a day not later than twelve months from the date of the order and that in the interim the child remain in the care and custody of his parents or the person having actual custody of the child at the time of apprehension, subject to inspection and supervision by the Superintendent (of Child Welfare);
- (b) repealed
- (c) the child be delivered into the control of his parents or any person having actual care and custody of the child at the time of apprehension, subject to such terms and conditions as seem reasonable and proper to the justice; or

- (d) the child be committed to the care and custody of the Superintendent or a (children's aid) society having jurisdiction within the area where the child was apprehended for a period not exceeding one year." (Though further orders may be obtained, no order shall be made that will result in a child being in the temporary care and custody of the Superintendent or a society for a continuous period exceeding thirty-six months.)

In the Yukon, he may, under section 11(2) of the territorial Child Welfare Ordinance, make an order which provides that

- "(a) the case be adjourned generally and the child be returned to his parents or any other person having actual care and custody of the child at the time of apprehension, or other suitable person, subject to inspection and supervision by the Director (of Child Welfare);
- (b) the child be delivered into the control of his parents or any person having actual care and custody of the child at the time of apprehension, or other suitable person, subject to such terms and conditions as seem reasonable and proper to the justice; or
- (c) the child be committed to the protective care of the Director either permanently or for a fixed temporary period which may be extended from time to time, but in no case shall an order be made at any time that results in the continuous temporary protective care of the child for a period of more than two years from the date of the first order for temporary protective care."

Any order committing a child to the temporary care and custody of the Northwest Territories' Superintendent of Child Welfare or to that of the Yukon's Director of Child Welfare can be converted into a permanent order conferring at the same time the guardianship of the child upon the Superintendent or the Director until the child reaches the age of eighteen, or, if the period of guardianship is extended, until he reaches nineteen. The same procedure applies to an order made under the Northwest Territories Child Welfare Ordinance committing a child to the care and custody of a children's aid society (Child Welfare Ordinance, R.O.N.W.T. 1974, ch. C-3, ss. 21, 24(2), 25(2) and 26; Child Welfare Ordinance, C.O.Y.T. 1976, ch. C-4, ss. 11(3) and 16(1); Age of Majority Ordinance, C.O.Y.T. 1976, ch. A-01, s. 6). The duties of a territorial Superintendent or Director of Child Welfare, and in the case of Northwest Territories, of a children's aid society with respect to children committed to their care are discussed under Article 10, paragraph 3.

Further, it should be noted that in both the Northwest Territories and the Yukon, an appeal can be taken against any decision rendered by a justice pertaining to the protection of children. In the Northwest Territories, where an order has been made with respect to a child, the Superintendent, or a parent of the child, may, within thirty days from the date of the order, appeal against the order to the territorial Supreme Court. Upon hearing the appeal, the Court may affirm, reverse or modify the order appealed against, or make such other order it deems proper. In the Yukon, the law is the same, except that the appeal can be made by the Director of Child Welfare, or any aggrieved person (Child Welfare Ordinance, R.O.N.W.T. 1974,

ch. C-3, s. 40; Child Welfare Ordinance, C.O.Y.T. 1976, ch. C-4, s. 32).

Paragraph 5: In the Territories, the provisions of the Criminal Code, R.S.C. 1970, ch. C-34 pertaining to appeals in summary conviction matters (ss. 747-771) have been incorporated into territorial law by the territorial Interpretation Ordinances (Interpretation Ordinance, R.O.N.W.T. 1974. ch. I-3, s. 28(1); Interpretation Ordinance, C.O.Y.T. 1976, ch. I-3, s. 26(1)). Thus, in both Territories, since the territorial Supreme Court exercises appellate jurisdiction in respect of any conviction or order rendered by a summary conviction court except an order which, on account of insanity, finds an accused either unfit to stand trial, or not guilty, the said accused may, in summary conviction proceedings, appeal any such conviction or order to the Supreme Court of a territory (ss. 747(i) and 748(a)). On appeal, decisions of the "appeal court" are based on the records of proceedings at trial, although if the "appeal court" deems it to be in the best interest of justice, the case may be retried before that court (s. 755). Alternatively, when an error of law or excess of jurisdiction is invoked as the basis of appeal against a conviction, order, determination or other proceeding of a summary conviction court, an appeal by the defendant, or any other party to the proceedings, can be by way of stated case (s. 762).

Once a territorial Supreme Court exercising appellate jurisdiction renders a decision, its decision can be appealed to the Court of Appeal of the territory, with leave of that Court, on any ground that involves a question of law alone (s. 771). Further, under section 41(1) and (3) of the Supreme Court Act, R.S.C. 1970, ch. S-19, an appeal lies to the Supreme Court of Canada, with leave of that Court, from the judgment of a territorial Court of



Appeal acquitting or convicting an accused, or setting aside, or affirming a conviction or acquittal on any question of law or jurisdiction.

When an accused is found unfit to stand trial on the ground of insanity, or is found not guilty because he was, at the time of the offence, insane, he may, subject to the conditions prescribed in the Criminal Code, appeal such a decision to the Court of Appeal of a territory and, thence, to the Supreme Court of Canada (Criminal Code, art. 603(2) and 620 as incorporated into territorial law by the Interpretation Ordinances).

Paragraph 6: In the Territories, jurisdiction over prosecution resides with the Crown in right of Canada, and is exercised by the Attorney-General of Canada and his agents, be they employees of the federal government or of a territorial government. Therefore, any person who is the victim of a miscarriage of justice must seek compensation from Her Majesty in right of Canada. As explained in the part of this Report dealing with federal legislation, such compensation can be made by way of ex gratia payment.

In addition, it should be noted that when proceedings have been instituted or continued without reasonable and probable cause, territorial common law accords any person the right to bring a civil action for damages against the person who instituted or continued these proceedings in all cases where they have been unsuccessful: that is to say where the proceedings terminated in favour of the plaintiff suing in tort.

Paragraph 7: The right recognized in this paragraph is part of territorial law. It is recognized in the

special pleas of autrefois acquit and autrefois convict which are part of the common law defence of res judicata and in section 743 (2) of the Criminal Code, R.S.C. 1970, ch. C-34 which is incorporated into the law of the Territories by the Interpretation Ordinances (Interpretation Ordinance, R.O.N.W.T. 1974, ch. I-3, s. 28(1); Interpretation Ordinance, C.O.Y.T. 1976, ch. I-3, s. 26(1)). Thus, when a person is charged with an offence for which he has already been convicted or acquitted, he may plead:

- a) under section 743(2) of the Criminal Code, that a summary conviction court has, when it dismissed a previous information against him, issued at his request a certified order of dismissal and that this order acts as a bar to any subsequent proceedings against the defendant in respect to the same cause;
- b) when section 743(2) does not apply, the accused may plead the common law defences of autrefois acquit or autrefois convict which provide that a person may not be tried for a crime in respect of which he has previously been acquitted or convicted, or in respect of which he could on some previous indictment have been lawfully convicted if the crime is, in effect, the same, or substantially the same, one in respect of which he has previously been acquitted or convicted, or could on some previous indictment have been convicted (Archbold, Criminal Pleading, Evidence and Practice, 39th Edition, ss. 373 and ff.). In territorial summary conviction proceedings, the right to use these pleas, or any other common law defences not inconsistent with territorial law, is expressly recognized by the incorporation into territorial law of section 737(1) of the Criminal Code which recognizes in summary

conviction proceedings the defendant's right to a full defence and of section 7(2) and (3) which allows the use of all common law defences.

In the Territories, as in the rest of Canada, when an accused is charged with two or more offences resulting from the same act, the defence of res judicata allows for conviction on only one of these charges; namely, the most grievous one which the prosecution succeeds in proving (Kienapple v. The Queen, (1975) 1 S.C.R. p. 729).

Article 15:

In law, the territorial Commissioners in Council have the power to enact retroactive penal legislation. However, as mentioned in the federal section of this Report, this is against Canadian practice. Further, the rules of statutory interpretation provide that no ordinance be construed to have a retroactive operation unless this is expressly enacted, or can be construed by necessary implication from the language employed in the ordinance.

Territorial legislation also provides that if after an offence is committed, but before a penalty is imposed, the enactment in force at the time the offence occurred is altered to reduce the penalty, the punishment to be imposed shall be reduced accordingly (Interpretation Ordinance, R.O.N.W.T. 1974, ch. I-3, s. 24(2)(e); Interpretation Ordinance, C.O.Y.T. 1976, ch. I-3, s. 22(2)(e)). This is not the case if provision for a lighter penalty is made after sentence is passed. In such cases, if the ordinance reducing the penalty is silent with respect to reduction of penalty for persons already sentenced, the

convicted person should seek a pardon from the Governor General (Letters Patent constituting the office of Governor General, sec. XII in R.S.C. 1970, Appendix II, no. 35), or, if he resides in the Northwest Territories and is held solely for an offence against a territorial ordinance, a parole from the Territorial Parole Board (Corrections Ordinance, R.O.N.W.T. 1974, ch. C-18, ss. 43, 44, 45 and 47). However, a person held for both a territorial and a federal offence, can seek parole only from the National Parole Board because the Commissioner in Council of the Northwest Territories has delegated to that Board the power to parole with respect to territorial offences in such cases (Corrections Ordinance, s. 47; Parole Act, R.S.C. 1970, ch. P-2, s. 7).

Article 16:

The right to recognition as a person before the law which the present Article recognizes is basically that of being subject to rights and duties. This right is part of territorial law.

Article 17:

Territorial law recognizes the right to privacy and affords protection against its invasion. Although some protection is afforded to this right by ordinance law, for example, restrictions on the flow of information



pertaining to medical insurance records, or on a landlord's right of entry into premises leased for residential purposes (Medical Care Ordinance, R.O.N.W.T. 1974, ch. M-9, s. 16; Landlord and Tenant Ordinance, R.O.N.W.T. 1974, ch. L-2, s. 52; Health Care Insurance Plan Ordinance, C.O.Y.T. 1976, ch. H-1, s. 19; Landlord and Tenant Ordinance, C.O.Y.T. 1976, ch. L-2, s. 72), the main source of protection lies in the laws of England as they apply in the Territories. The latter permit an individual to maintain certain parts of his life private and inviolable. However, due to the absence of an all-encompassing tort of privacy, legal protection of an individual's right to privacy is fragmented. Almost every traditional legal subject has some small portion of it devoted to the protection of this right. In this context, reference ought to be made to the torts of defamation (libel and slander as partly codified and amended by the Defamation Ordinances, R.O.N.W.T. 1974, ch. D-1 and C.O.Y.T. 1976, ch. D-1), negligent misrepresentation, passing off, appropriation of personality and deceit; to the law of contract which can be used to protect an individual against the breach of an obligation of confidentiality recognized either expressly, or impliedly in a contract; to matrimonial law which protects against jactitation of marriage; and to the equitable jurisdiction of the courts which allows them to intervene in order to prevent an individual from revealing confidential information which he has obtained because of a marital, contractual or statutory relationship with the plaintiff. However, the laws of England as they apply in the Territories do not offer an aggrieved party civil remedies in every instance where his privacy may have been infringed.

The right of privacy recognized in the present Article is not absolute. An individual's privacy can be affected by territorial legislation as long as this is done in a manner that is not arbitrary. In this context, mention ought to be made of the territorial legislation which allows censorship of the mail of inmates held in correctional institutions (Corrections Ordinance, R.O.N.W.T. 1974, ch. C-18, s. 28; Corrections Regulations, Commissioner's Order (Yukon) 1973/161, s. 3(1)(e)). This legislation in no way contravenes this Article. Its basic aim is to ensure the good management of territorial correctional institutions and, as such, is not arbitrary. Further, the practice it allows is not to be carried on in an arbitrary manner.

Article 18:

Territorial law being part of the laws of Canada as defined in section 5(2) of the Canadian Bill of Rights, any part of it which abrogates, abridges or infringes an individual's right to freedom of religion as recognized in section 1(c) of the said Bill would be held inoperative. Hence, all comments pertaining to freedom of religion and the Canadian Bill of Rights found in the part of this Report pertaining to federal law also apply with respect to territorial law.

In addition, discrimination on the basis of creed in matters of employment (hiring, conditions of employment, lay-off and trade union membership and rights) is, as a rule, prohibited by the territorial Fair Practices Ordinances. These Ordinances also prohibit, on the basis of religion, the denial of accommodation, services and facilities made available to the public and the refusal to rent

apartments in buildings described in the Ordinances. They also prohibit the publishing or display of any notice, sign or other representation which may encourage discrimination on the ground of religion. In the Yukon this last prohibition is limited to matters of employment, accommodation, services and facilities made available to the public as well as lodging in apartment buildings (Fair Practices Ordinance, R.O.N.W.T. 1974, ch. F-2, ss. 3-5; s. 13; Fair Practices Ordinance, C.O.Y.T. 1976, ch. F-2, ss. 3-5; s. 13). Further, discrimination on the basis of religion is prohibited with respect to the appointment to the public services of the Northwest Territories and the Yukon (Public Service Ordinance, R.O.N.W.T. 1974, ch. P-13, s. 18; Public Service Commission Ordinance, C.O.Y.T. 1976, ch. P-10.1, s. 99).

It ought also to be mentioned that the territorial School Ordinances allow for religious education and for the setting up of denominational (Protestant or Roman Catholic) schools (Education Ordinance, O.N.W.T. 1976 (3rd session), ch. 2, ss. 47-52; ss. 60-61; School Ordinance, C.O.Y.T. 1976, ch. S-3, s. 35; ss. 5 and 227-230). In schools where religious education is given, the hiring of teachers on the basis of religion does not constitute prohibited discrimination: section 13(2) of both the Fair Practices Ordinances of the Northwest Territories and of the Yukon expressly allows such hirings. Finally, inmates of correctional institutions can attend religious services and can be visited by members of the clergy (Corrections Ordinance, R.O.N.W.T. 1974, ch. C-18, s. 27(e); Corrections Services Regulations, Northwest Territories, 196-73, ss. 39-41; Corrections

Ordinance, C.O.Y.T. 1976, ch. C-19.1, s. 30(2); Corrections Regulations, Commissioner's Order (Yukon) 1973/161, ss. 78-80).

Article 19:

Under sections 1(d) and (f) and 2 of the Canadian Bill of Rights any part of territorial law which abrogates, abridges or infringes the freedom of expression as recognized in this Article would be held by the courts to be inoperative. It should, however, be mentioned that territorial law recognizes that freedom of expression is not absolute. Thus in the Northwest Territories, the Motion Pictures Ordinance, R.O.N.W.T. 1974, ch. M-14 allows censorship of film or slide "to prevent the use of dialogues and pictures depicting criminal or immoral scenes" and to prevent the showing of films or slides that are "injurious to public morals or opposed to public welfare" (sec. 20(2)). As well, various civil recourses are available against individuals who abuse this freedom. In this context, the torts of defamation and nuisance should be mentioned. However, collective rights must sometimes have priority over individual rights. Thus ordinance law grants to members of the territorial Councils civil immunity for what they say before the Council or any committee thereof (Council Ordinance, R.O.N.W.T. 1974, ch. C-19, s. 14; Yukon Council Ordinance, O.Y.T. 1978 (1st sess.), ch. 2, s. 35). Also, territorial legislation affords privileges to newspapers, periodicals and broadcasting undertakings and their servants and employees with respect to certain news items they may publish or broadcast, e.g. reporting of public meetings, of proceedings



in the Senate or House of Commons of Canada, a provincial legislature, of court proceedings or of a meeting of any board or local authority formed under an Act of Parliament or of a provincial legislature or under an ordinance (Defamation Ordinance, R.O.N.W.T. 1974, ch. D-1, ss. 10, 11 and 12; Defamation Ordinance, C.O.Y.T. 1976, ch. D-1, ss. 10, 11 and 12).

Article 20:

In both the Northwest Territories and the Yukon, legislation has been enacted which, to a greater or lesser extent, prohibits public encouragement of discrimination. In the Northwest Territories, section 5 of the Fair Practices Ordinance, R.O.N.W.T. 1974, ch. F-2 states that:

"5.(1) No person shall publish or display or cause or permit to be published or displayed any notice, sign, symbol, emblem or other representation indicating discrimination or an intention to discriminate against any person or any class of persons for any purpose because of the race, creed, colour, sex, marital status, nationality, ancestry or place of origin of that person or class of persons.

(2) Nothing in this section shall be deemed to interfere with the free expression of opinion upon any subject."

A similar, though less comprehensive section is found in the Yukon's Fair Practices Ordinance, C.O.Y.T. 1976, ch. F-2. There, section 5 prohibits only notices, signs and other representation which indicate discrimination against any person or class of persons on the ground of race, religion, religious creed, colour, ancestry, sex,

marital status or ethnic or national origin with respect to employment, including trade union membership and rights, and to accommodation, services or facilities made available to the public.

Article 21:

With respect to the right of peaceful assembly, the Fourth Edition of Halsbury's The Laws of England states, in Volume 8, page 554, no. 836, that:

"The right of public meeting, which includes the right of procession in the streets, means that persons may meet together so long as they do not trespass upon private property, commit a nuisance, obstruct the highway or infringe the law relating to public meetings or unlawful assemblies."

This statement basically sums up the state of the law in the Territories.

The right of assembly is recognized in section 1(e) of the Canadian Bill of Rights. Any territorial ordinance which would abrogate, abridge or infringe this right would be construed under section 2 of the said Bill as inoperative.

Article 22:

Freedom of association is a right recognized and protected by the Canadian Bill of Rights (ss. 1(e) and 2). No territorial law can abrogate, abridge or infringe this right without being construed by the courts to be inoperative.

One of the main components of freedom of association, as recognized in the present Article of the Covenant,

is the right to form and join unions. In Canada, this right falls under the heading of industrial relations. In such matters, the Territories' jurisdiction is residual, being limited to activities which do not fall within the ambit of Part V of the Canada Labour Code, R.S.C. 1970, ch. L-1; namely, the territorial public services and the territorially operated school services.

Within the ambit of their restricted jurisdiction, both the Territories have recognized employees' rights to form and join employee associations. In the Northwest Territories, all public service employees and teachers, save individuals employed in a managerial or confidential capacity, are eligible for membership in an employee association. All eligible public servants, save teachers, can join the Northwest Territories Public Service Alliance, and all teachers can join the Teachers' Association. Both associations are entitled to negotiate collective agreements with the territorial Commissioner (Northwest Territories Public Service Association Ordinance, R.O.N.W.T. 1974, ch. N-2, ss. 3, 6(e) and 7(e); Teachers' Association Ordinance, O.N.W.T. 1976 (3rd session), ch. 3, ss. 3(3)(e), 4(g) and 12; Public Service Ordinance, R.O.N.W.T. 1974, ch. P-13, s. 42(2)). In the Yukon, every public service employee, and every teacher or other person appointed by the territorial Commissioner under the School Ordinance, save for certain exceptions which do not conflict with the present Article, such as individuals employed in managerial or confidential positions or part-time staff, can also join employee associations which are able to negotiate collective agreements with the Commissioner. For all public service employees, save persons employed under the School Ordinance, the right to form a union and

to negotiate is given by the Public Service Staff Relations Ordinance. For teachers and other persons appointed by the territorial Commissioner under the School Ordinance, these rights are recognized in that Ordinance (Public Service Staff Relations Ordinance, C.O.Y.T. 1976 ch. P-11, ss. 2 (employee), 4(1), 21, 28, 46 and 99; School Ordinance, C.O.Y.T. 1976, ch. S-3, ss. 118 (employee), 119, 136 and 155).

In the Yukon, the Public Service Staff Relations Ordinance not only forbids certification, but also provides for the decertification of any employee organization that is employer dominated or influenced; that receives or requires from members who are in the territorial public service any money for activities carried on by, or on behalf of, a political party; or that discriminates on the basis of sex, marital status, race, national origin, colour or religion. Further, in order to avoid any obstruction, interference or control by the territorial Government of an employee association, that Ordinance states that "no person who is employed in a managerial or confidential capacity ... shall participate in or interfere with the formation or administration of an employee organization or the representation of employees by such an organization" or discriminate against such an organization. It also prohibits, in the course of hiring or employment, the use of discrimination or intimidation to influence joining, continuation or cessation of membership in an employee association (Public Service Staff Relations Ordinance, ss. 4(2) and (3), 5, 30 and 33(2)). Similar provisions are also found in the School Ordinance (ss. 140, 143(4), 145(2), 203, 204).

In both the Northwest Territories and the Yukon, employee associations are subject to the territorial Fair



Practices Ordinances which prohibit discrimination with respect to union membership and rights on the ground of race, creed, colour, sex, marital status, ancestry, nationality or place of origin (national or ethnic origin in the Yukon) (Fair Practices Ordinance, R.O.N.W.T. 1974, ch. F-2, s. 3(4) and (5); Fair Practices Ordinance, C.O.Y.T. 1976, ch. F-2, s. 3(3) and (4)).

Article 23:

As mentioned in the part of this Report pertaining to federal legislation, legislative jurisdiction over the family is divided between, on one hand, Parliament and, on the other, the provincial legislatures and, by virtue of statutory delegation of authority from Parliament, the territorial Commissioners in Council.

Paragraph 1: An examination of territorial family law reveals that the territorial governments subscribe to the principle that "the family is the natural and fundamental group unit of society and is entitled to the protection of society and the State".

Paragraph 2: At common law, the age of consent for marriage is fourteen years for males and twelve for females. In Canada, jurisdiction over the age consent for marriage resides with Parliament (British North America Act, 1867, 30 & 31 Victoria ch. 3, s. 91(26)). However, the Territories have been given jurisdiction over solemnization of marriage (The Northwest Territories Act, R.S.C. 1970, ch. N-22, s. 13(g); The Yukon Territory Act, R.S.C. 1970, ch. Y-2, s. 16(g)). Using this power the territorial Commissioners in Council of both the Northwest Territories and the Yukon enacted territorial Marriage Ordinances which prohibit,

except where necessary to prevent the illegitimacy of offspring, or where a territorial Commissioner has given permission, the issuing of a marriage licence when either of the parties is under the age of fifteen. However, even in these circumstances, a child under the age of nineteen must obtain the consent of his parents or of the person acting in loco parentis, save if exempted from so doing. Proof of parental consent is not required when a minor of at least eighteen years of age deposits a statutory declaration to the effect

- "(a) that the father and mother of the minor are dead and that there is no guardian of the minor,
- (b) that a parent whose consent is required is not a resident of the Territory and that the minor has been resident of the Territory for twelve months preceding the date of the declaration,
- (c) that the father and mother of the minor are patients in a mental institution or that the surviving parent is a patient in a mental institution and that there is no guardian of the minor, or
- (d) that the minor has, for not less than six months immediately preceding the date of the statutory declaration, been living apart from his parents or guardian and has not received financial aid or support from his parents or guardian within that period."

Similarly, when withheld, parental consent can be dispensed with if a minor obtains a court order (Marriage Ordinance, R.O.N.W.T. 1974, ch. M-5, s. 22 and ss. 44-46; Marriage Ordinance, C.O.Y.T. 1976, ch. M-3, s. 22 and ss. 44-46; Age of Majority Ordinance, C.O.Y.T. 1976, ch. A-01, ss. 3 and 6).

Paragraph 3: The power to legislate with respect to consent falls within Parliament's jurisdiction. However, the Territories, using their jurisdiction over solemnization of marriage, have enacted legislation prohibiting the celebration of a marriage when one of the parties cannot consent. Thus the territorial Marriage Ordinances state that no person shall perform a marriage ceremony where he knows that one of the contracting parties has been declared mentally disordered, or knows, or has reason to believe, that one of the parties is under the influence of liquor. It also prohibits any person from undergoing a marriage ceremony if he knows that the other party has been declared mentally disordered, or suffers from a communicable disease in a communicable state or knows, or has reason to know, that the other party is under the influence of liquor (Marriage Ordinance, R.O.N.W.T. 1974, ch. M-5, ss. 19-21; Marriage Ordinance, C.O.Y.T. 1976, ch. M-3, ss. 19-21). Save for the restriction which pertains to persons suffering from a communicable disease, the above-mentioned restrictions relate to the existence of the capacity of consent. As such, they are allowed under the present paragraph. As to the restriction pertaining to persons suffering from a communicable disease, it can be justified on the ground of public order.

Paragraph 4: As a result of the adhesion of Canada to the present Covenant, the territorial governments have incurred the obligation to ensure the equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. As a rule, territorial legislation recognizes the above-mentioned right. In this context, reference ought to be made to certain territorial ordinances, namely,

- a) Married Women's Property Ordinances which establish separation of property as the matrimonial regime of the territories (Married Women's Property Ordinance, R.O.N.W.T. 1974, ch. M-6; Married Women's Property Ordinance, C.O.Y.T. 1976, ch. M-4);
- b) Maintenance Ordinances which state that a husband is liable for the maintenance of his wife and vice-versa. These ordinances also recognize other obligations to provide maintenance; namely, that of parents towards their children and grandchildren, and of children towards their parents and grandparents (Maintenance Ordinance, R.O.N.W.T. 1974, ch. M-2, ss. 2, 3, 4 and 7; Maintenance Ordinance, C.O.Y.T. 1976, ch. M-2, ss. 2, 3, 4, 5, 6 and 7);
- c) Intestate Succession Ordinances which provide for the division of the estate of a spouse who dies intestate (Intestate Succession Ordinance, R.O.N.W.T. 1974, ch. I-4; Intestate Succession Ordinance, C.O.Y.T. 1976, ch. I-4);
- d) Dependants' Relief Ordinances which allow the spouse and children of a deceased person to claim maintenance from his estate whether he died testate or intestate (Dependants' Relief Ordinance, R.O.N.W.T. 1974, ch. D-4, ss. 2, 3, 6, 7, 8, 12 and 14; Dependants' Relief Ordinance, C.O.Y.T. 1976, ch. D-3, ss. 2, 3, 8, 13, 14 and 17).

Although territorial law recognizes the equality of spouses as provided by this section, there exists in both tort and matrimonial laws certain exceptions.<sup>(1)</sup> As an example, while tort law accords a husband a right against a third person who is responsible for the loss of the society or services of his wife, is harbouring her or has

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(1) It should be noted that the courts have not yet had an opportunity to determine if such provisions would be contrary to section 1(b) of the Canadian Bill of Rights which guarantees the right of the individual to equality before the law without any discrimination by reason, inter alia, of sex.



had adulterous relations with her, it affords no such recourse to a wife.<sup>(1)</sup> Similarly, in cases of judicial separation, nullity of marriage or restitution of conjugal rights, a wife, in the Northwest Territories, has, under the Domestic Relations Ordinance, a right to seek alimony and maintenance from her husband while he has no such right under that Ordinance (Domestic Relations Ordinance, R.O.N.W.T. 1974, ch. D-9, ss. 16(1), 17 and 22). In the Yukon a similar situation exists under the Divorce and Matrimonial Causes Act, 1857. This Act gives to a wife, but not a husband, the right to ask for alimony in cases of judicial separation, of nullity of marriage or restitution of conjugal rights. It should, however, be noted that in cases of nullity of marriage, a wife can receive alimony only before judgment is rendered by the court and this only if she succeeds in establishing that there existed a de facto marriage (Divorce and Matrimonial Causes Act, 1857, 20 & 21 Victoria ch. 85, ss. 2, 6, 7 and 32 (U.K.) as incorporated into territorial law by the Yukon Act, R.S.C. 1970, ch. Y-2, s. 22(1); Judicature Ordinance, C.O.Y.T. 1976, ch. J-1, s. 7(1); Foden v. Foden, (1894) Law Reports Probate Division 307 (U.K.); Barnet v. Barnet, (1934) O.R. 347; Brown v. Brown, (1909) 10 W.L.R. 120). It should however, be noted that in both Territories, any spouse could ask, before and after judgment, for maintenance under the Maintenance Ordinances in cases pertaining to restitution of conjugal rights or separation since these

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(1) In both Territories, when a husband sues to recover damages from a person who has committed adultery with his wife, the courts may direct that damages awarded be used for the benefit of the children of the marriage or for the maintenance of the wife (Domestic Relations Ordinance, R.O.N.W.T. 1974, ch. D-9, s. 13; The Divorce and Matrimonial Causes Act, 1857, 20 & 21 Victoria ch. 85, s. 33 (U.K.) as incorporated into Yukon territorial law by the Yukon Act, R.S.C. 1970, ch. Y-2, s. 22(1)).

Ordinances do not forbid a spouse from so doing in these cases. Further, in cases pertaining to annulments, the Maintenance Ordinances could also be invoked to sustain, before judgment, a claim to maintenance. However, if a marriage is annulled, no maintenance can be given under these Ordinances (Maintenance Ordinance, R.O.N.W.T. 1974, ch. M-2, ss. 3(1), 4(1) and 5; Maintenance Ordinance, C.O.Y.T. 1976, ch. M-2, s. 6). It should be mentioned that in the Yukon, a court may refuse maintenance under the Maintenance Ordinance to a wife who is guilty of adultery or desertion. No similar restriction exists on a husband's right to get maintenance (Maintenance Ordinance, C.O.Y.T. 1976, ch. M-2, s. 11).

The present paragraph also refers to the protection to be afforded to children at the dissolution of marriage. This has been partly dealt with in federal legislation. However, marriages are not ended by divorces alone. Therefore, mention ought to be made of some of the various measures found in territorial law aimed at protecting children when a marriage ends. Thus if a marriage is ended by the death of a parent, children are given a right in the deceased's estate if the latter dies intestate (Intestate Succession Ordinance, R.O.N.W.T. 1974, ch. I-4, ss. 3, 4, 14 and 17; Intestate Succession Ordinance, C.O.Y.T. 1976, ch. I-4, ss. 3, 4, 14 and 17). Further the territorial Dependants Relief Ordinances also confer upon a deceased parent's children or stepchildren a right to make a claim for maintenance against his estate, whether he dies testate or intestate (Dependants' Relief Ordinance, R.O.N.W.T. 1974, ch. D-4, ss. 2, 3, 6, 7, 8, 12 and 14; Dependants' Relief Ordinance, C.O.Y.T. 1976, ch. D-3, ss. 2, 3, 8, 13, 14 and 17). When a marriage is annulled, or when spouses separate,

either as a result of a de facto or of a judicial separation, territorial law -- through a mixture of such diverse elements as English statute law, territorial ordinance law, English ecclesiastical court practice, and contract law -- provides for the custody and maintenance of children (The Divorce and Matrimonial Causes Act, 1857, 20 & 21 Victoria ch. 85, ss. 35 and 45 (U.K.); Domestic Relations Ordinance, R.O.N.W.T. 1974, ch. D-9, ss. 32 and 33; Judicature Ordinance, R.O.N.W.T. 1974, ch. J-1, ss. 19(k) and 24; Maintenance Ordinance, R.O.N.W.T. 1974, ch. M-2, ss. 2(child) and 3; Judicature Ordinance, C.O.Y.T. 1976, ch. J-1, ss. 10(k) and 14; Maintenance Ordinance, C.O.Y.T. 1976, ch. M-2, ss. 2(1)(child) and 3).

Article 24:

Within the scope of the Territories' jurisdiction, ordinances have been enacted to afford the rights enunciated in the present Article.

Paragraph 1: The territorial governments of both the Northwest Territories and the Yukon have recognized that parents have an obligation to provide maintenance for their children. Thus, in both Territories, the Maintenance Ordinances allow children to obtain maintenance from their parents (Maintenance Ordinance, R.O.N.W.T. 1974, ch. M-2, ss. 2, 3(2) and 4(2); Maintenance Ordinance, C.O.Y.T. 1976, ch. M-2, ss. 2(1), 3 and 7(1). In respect to the Northwest Territories, reference should also be made to the Child Welfare Ordinance, R.O.N.W.T. 1974, ch. C-3, s. 91 and to Re Deborah E 4-789, (1972) 5 W.W.R. 203 where Eskimo, custom adoption is recognized as part of the common law of the Territories). Subsidiarily, under the territorial Child Welfare Ordinances, maintenance for a child born out of

wedlock can be obtained from the father, and when the child is not in her care and custody, from the mother (Child Welfare Ordinance, R.O.N.W.T. 1974, ch. C-3, ss. 52, 60, 69 and 74; Child Welfare Ordinance, C.O.Y.T. 1976, ch. C-4, ss. 41, 48, 58 and 62). Under the territorial Dependants' Relief Ordinances, any natural (legitimate) child, step-child or adopted child can, if unable by reason of mental or physical disability to earn a livelihood, seek a court order entitling him to maintenance from his deceased parent's estate, whether the deceased died testate or intestate (Dependants' Relief Ordinance, R.O.N.W.T. 1974, ch. D-4, ss. 2(a) and 3, 6, 7, 8, 12 and 14; Dependants' Relief Ordinance, C.O.Y.T. 1976, ch. D-3, ss. 2(1), 3, 8, 13, 14 and 17)). Mention ought finally to be made of the fact that the Territories provide social assistance to persons in need. By furnishing assistance to the family, the territorial governments afford assistance to children, thus fulfilling their obligation to protect them (Social Assistance Ordinance, R.O.N.W.T. 1974, ch. S-9, s. 8; Social Assistance Ordinance, C.O.Y.T. 1976, ch. S-6, s. 8).

The Northwest Territories Legitimation Ordinance provides for the automatic legitimation of children born out of wedlock when their parents later marry and also protects the legitimate status of children born from a voidable marriage which was later annulled, or born to a marriage void ab initio when it was registered according to the law of the place where it was celebrated and where at least one of the contracting parties acted in good faith (Legitimation Ordinance, R.O.N.W.T. 1974, ch. L-4, ss. 2-5). The Yukon Territory also has a Legitimation Ordinance. However, this Ordinance deals only with the legitimation of



children born out of wedlock whose parents subsequently marry (Legitimation Ordinance, C.O.Y.T. 1976, ch. L-6, s. 2). Children from an annulled or a void marriage are considered illegitimate since their status is dealt with by the common law which recognizes as legitimate only children born in wedlock.

The territorial governments, in the furtherance of the obligation of protection which this paragraph recognizes, have enacted ordinances regulating adoptions and conferring upon adopted children the same rights as the legitimate children of the adopting parents (Child Welfare Ordinance, R.O.N.W.T. 1974, ch. C-3, ss. 79-99; Child Welfare Ordinance, C.O.Y.T. 1976, ch. C-4, ss. 66-90). They have also provided for the protection of children. Thus, under the provisions of the territorial Child Welfare Ordinances, the authorities can, in extreme cases, be authorized to assume temporary or permanent custody of children, to place them in foster homes or other institutions, and even to authorize their adoption (Child Welfare Ordinance, R.O.N.W.T. 1974, ch. C-3, ss. 14, 19, 21, 24, 25, 26 and 87; Child Welfare Ordinance, C.O.Y.T. 1976, ch. C-4, ss. 6, 11, 15, 16 and 71). To ensure that children receive a basic, minimum education the territorial governments require compulsory school attendance. In the Northwest Territories, any child who, at any time in any given year, reaches six years of age, must attend school from the beginning of the school year in the year he attains six years of age until the end of the school year following the year in which he attains the age of fifteen (Education Ordinance, O.N.W.T. 1976 (3rd session), ch. 2, s. 96). In the Yukon, any child who, on September 1st of a given year is six years eight months of age, must attend school until the last school day of the school year in which he attains the age of sixteen years (School Ordinance, C.O.Y.T. 1976, ch. S-3, s. 29(1)).

Paragraph 2: In both the Northwest Territories and the Yukon, the territorial Vital Statistics Ordinances provide for the registration and naming of children born therein (Vital Statistics Ordinance, R.O.N.W.T. 1974, ch. V-4, ss. 3 and 4; Vital Statistics Ordinance, C.O.Y.T. 1976, ch. V-2, ss. 3 and 4).

Article 25:

Legislation implementing the rights recognized in the present Article is in force in both the Northwest Territories and the Yukon.

Paragraph (a): The residents of the Territories have the right to take part in the conduct of public affairs at the territorial level, and where municipal institutions exist, at the municipal level. At the territorial level, their participation in the conduct of public affairs is both direct and indirect. They can, when they are qualified to do so, vote in territorial Council elections or seek election to the territorial Council. They can also take part in territorial public affairs, albeit more indirectly, by participating in the federal political process. At the federal level, both Territories are represented in the Senate where they are each entitled to one appointed member (British North America Act, (No. 2) 1975, S.C. 1974-75-76, ch. 53, s. 1(c)) and in the House of Commons where they are entitled to three elected members, two from the Northwest Territories and one from the Yukon (British North America Act, 1867, 30 & 31 Victoria ch. 3, s. 51 (U.K.)). Thus while it is true that the residents of a territory do not directly choose the territorial executive since the head of this executive, the territorial Commissioner, is appointed

by the Governor in Council (i.e. the cabinet), they do, however, have a choice in the choosing of the governments who appoint the said Commissioner. Their representatives in the Senate and House also participate in the process of parliamentary control and supervision under which all ministers, including the Minister of Indian and Northern Affairs who is responsible to Parliament for the acts, administration and conduct of the territorial Commissioners, are accountable and answerable to Parliament. Thus, by allowing the residents of the Territories to participate in the federal political process, Parliament has met its obligations under this paragraph. At the municipal level, territorial residents participate in the conduct of public affairs by seeking election to municipal councils and voting at municipal elections.

In the Yukon, another form of public participation is the plebiscite. There, the Commissioner may, if he has obtained the requisite funds from the Council, hold a plebiscite when he considers that it is necessary or desirable to seek the opinion of the public with respect to any matter (Plebiscite Ordinance, C.O.Y.T. 1976, ch. P-5, s. 2).

Paragraph (b): The right to vote and to be elected at genuine, periodic elections held by universal and equal suffrage with a secret ballot is accorded to the residents of the Northwest Territories and the Yukon with respect to both Council and municipal elections.

At the territorial level, Parliament has provided that each territory have an elected Council, and that every Council continue for four years from the date of the return of the writ for a general election, although it may be dissolved earlier by the Governor in Council after consultation with its members, or at least with the members with whom consultation can be effected (Northwest Territories

Act, R.S.C. 1970, ch. N-22, s. 8; Yukon Act, R.S.C. 1970, ch. Y-2, s. 9(1) and (2)).

The electoral system in force in the Territories is the same as exists in the rest of the country: members of the territorial Councils are elected by universal and equal suffrage and by secret ballot in a single round using the majority uninominal (riding) system.

In the Northwest Territories, the various components of the right recognized in the present paragraph are found in the Northwest Territories Act, in the Council Ordinance, R.O.N.W.T. 1974, ch. C-19 and in the Elections Ordinance, 1978, O.N.W.T. 1978 (3rd session), ch. 3.<sup>(1)</sup>

The Northwest Territories Act establishes a fifteen member territorial Council elected by riding (s. 8(1)). It also gives the territorial Commissioner in Council the power to vary the size of the Council, subject to one restriction: the Council must never have less than fifteen nor more than twenty-five members (ss. 8(1) and 8.1). The Council Ordinance creates twenty-two electoral districts each entitled to return one member to the Council; it also determines the qualifications required to sit on the Council and to remain thereon (ss. 3, 8 and 16.1-16.7). As for the Elections Ordinance, 1978, it determines

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- (1) The Elections Ordinance, 1978, O.N.W.T. 1978 (3rd session), ch. 3 has not yet been proclaimed into force. At the present time, the Council Ordinance, R.O.N.W.T. 1974, ch. C-19 determines who has the right to vote and to seek election to the Council (ss. 4, 6, 7 and 8) while the Canada Elections Act, R.S.C. 1970, ch. 14 (1st supp.), governs the conduct of territorial elections (ss. 18, 39, 41, 44, 47 and 58(1)). When section 112 of the Canada Elections Act which provides for the application of that Act to territorial election is repealed, the Commissioner of the Northwest Territories will be able to proclaim the Elections Ordinance, 1978 in force. This is expected to happen in the near future as Parliament enacted legislation, as yet unproclaimed, which repeals section 112 and substitutes therefore a new provision under which the territory must enact its own election legislation. This being the case, the Elections Ordinance, 1978 shall be considered, for the purposes of this Report, to have already been proclaimed into force.



who has the right to vote and to seek election to the Council; it also governs the conduct of elections (ss. 11-19, 43, 44, 46, 48, 49, 52(6), 56(1) and (3), 74, 75 and 76).

In the Yukon, the constitutive elements of the right recognized in the present paragraph are found in the Yukon Act, R.S.C. 1970, ch. Y-2, the Electoral District Boundaries Ordinance, O.Y.T. 1977, ch. 2, the Elections Ordinance, 1977, O.Y.T. 1977 (2nd session), ch. 3 and the Yukon Council Ordinance, O.Y.T. 1978 (1st session), ch. 2.

The Yukon Act establishes a twelve member territorial Council whose members are elected to represent such electoral districts in the Territory as named and described by the Commissioner in Council. It also gives to the Commissioner in Council the power to vary the size of the Council as long as its membership is not reduced to less than twelve, or increased to more than twenty (ss. 9 and 9.1). Recently, the Commissioner in Council used this power and enacted the Electoral District Boundaries Ordinance. This Ordinance increases the number of electoral districts (ridings) from twelve to sixteen. As for the Yukon Council Ordinance, it provides that each electoral district return to the Council one member to represent that district (s. 3). It also determines the qualifications required to seek election to the Council and, once elected, to remain thereon (ss. 5-13). Finally the Elections Ordinance, 1977 determines who can vote and seek office at Council elections, and governs the conduct of such elections (ss. 18-26, 28, 29, 49, 52, 53, 54(3), (13), (14), (15), (16) and (17), 57, 58, 61(5), 65(1) and (3) and 80).

In both territories, restrictions have been imposed on the right of public servants to participate in the political process. These restrictions, it should be mentioned, do not contravene the Covenant, for they are allowed under Articles 19, 21, 22 and 25. In the Northwest Territories, the

restrictions found in section 33 of the Public Service Ordinance, R.O.N.W.T. 1974, ch. P-13 are basically similar to those found in section 32 of the Public Service Employment Act, R.S.C. 1970, ch. P-32. The only difference between the federal and territorial statutes pertaining to political activities of public servants is that while at the federal level only employees below the rank of Deputy Head may seek election to the House of Commons, a provincial legislature or a territorial Council if allowed to do so by the Public Service Commission, in the territory all employees are allowed to seek election to the House of Commons or to the territorial Council if allowed to do so by the Commissioner. In the Yukon, the political activities of public servants are not as limited as they are at the federal level or in the Northwest Territories. Thus, while the territorial Public Service Commission Ordinance, C.O.Y.T. 1976, ch. P-10.1, like its federal equivalent, recognizes that all public servants may attend political meetings, it also states that all public servants may, unless otherwise forbidden, engage in political activities as long as in so doing they do not reveal information they have obtained as a result of their employment, criticize any government policy which they have been instrumental in formulating or solicit funds for a political party or candidate for election at the federal or territorial level. However, this right is not conferred, in respect to federal election, to Deputy Heads of Department and, in respect to territorial elections, to persons holding a managerial or confidential position. As regards the right to seek election at the federal or territorial level, and the implication of this right once granted by a federal or territorial Public Service Commission, the territorial legislation is nearly identical with its federal equivalent. The basic difference between the federal and territorial statutes lies in the fact that, in the territory, the right to seek election can be granted if "operational requirements permit" while, at the federal level, this right can be granted only if "the

usefulness to the Public Service of (an) employee in the position he ... occupies would not be impaired by reason of his having been a candidate..." (ss. 161-171).<sup>(1)</sup>

At the municipal level, the territorial governments have provided for the creation of municipal or municipal-like institutions. These "municipalities" are administered by elected councils elected according to the provisions of this paragraph.

In the Northwest Territories, the Municipal Ordinance, R.O.N.W.T. 1974, ch. M-15 governs all facets of municipal elections. Inter alia, it determines who has the right to vote in municipal elections, or to seek election to the council of a city, town, village or hamlet (ss. 7(1), 13(2), (3) and (4), 14, 15 and 17-23). It also provides for the terms of office of mayors and councillors, frequency of elections, secrecy of ballot and election of candidates with a plurality of votes (ss. 7(2), (5), (6) and (7), 51(i), (j), (k) and (l) and 54(1)(b) and (c)).

Equivalent provisions are found in Yukon territorial law. There, all aspects of municipal elections are governed, in the case of cities, towns, villages and municipal districts, by the Municipal Elections Ordinance, C.O.Y.T. 1976, ch. M-14 and in the case of local improvement districts, by the Local Improvement District Ordinance, C.O.Y.T. 1976, ch. L-9. In the Yukon, the right to vote or to seek election is governed by ss. 5, 8, 9, 31-46, 69 and 71 of the Municipal Elections Ordinance and by ss. 6(5) and (6), 7.1, 41-55, 79 and 81 of the Local Improvement District Ordinance. As for terms of office, frequency of elections, secrecy of ballot and elections of candidates with a plurality of votes, this is provided for by ss. 3, 10, 68 and

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(1) It should be noted that a Deputy Head can neither engage in political activities nor seek election at the municipal level (Public Service Commission Ordinance, C.O.Y.T. 1976, ch. P-10.1, s. 169(3)).

78(1)(d) of the Municipal Elections Ordinance and by ss. 6(2) and (3), 78 and 88(1)(d) of the Local Improvement District Ordinance.

Paragraph (c): In the Northwest Territories, the territorial Commissioner has the exclusive right and authority to appoint persons to the public service. Appointments to the public service are based on the principle of merit and are made without discrimination on the basis of race, national origin or religion. Priority in appointment is given to persons already in the public service, although appointment can be made from without when no suitable candidate can be found within. Further, appointments are made by competition, although where qualified candidates are available from the public service, and the Commissioner deems it impracticable, or not in the interest of the public service to hold a competition, he may appoint, without competition, the public servant who is best qualified (Public Service Ordinance, R.O.N.W.T. 1974, ch. P-13, ss. 15, 16, 17 and 18; Public Service Regulations, Northwest Territories 343-67, s. 3). In the Yukon, where appointments to the public service are made by the Public Service Commission, save where it has delegated its power, the rules pertaining to appointment to the public service are basically similar to those in force in the Northwest Territories. However, it should be noted that the grounds of prohibited discrimination are more extensive than those in the Northwest Territories: not only is discrimination prohibited on the grounds of race, national origin and religion, it is also prohibited on the grounds of religious creed, colour, ancestry, sex, marital status and ethnic origin (Public Service Commission Ordinance, C.O.Y.T. 1976, ch. P-10.1, s. 10 and ss. 96 to 115).

Municipalities in both Territories are subject to the territorial Fair Practices Ordinances. Their hiring



policies must, therefore, conform to the requirements of these Ordinances. These Ordinances prohibit discrimination in employment on the grounds of race, creed, colour, sex, marital status, ancestry, nationality or place of origin (ethnic or national origin in the Yukon) (Fair Practices Ordinance, R.O.N.W.T. 1974, ch. F-2, ss. 3(1), (2), (3) and (5) and 5; Fair Practices Ordinance, C.O.Y.T. 1976, ch. F-2, ss. 3(1), (2) and (4) and 5).

Article 26:

The Canadian Bill of Rights which applies to the Territories recognizes "the right of the individual to equality before the law and the protection of the law" (sec. 1(b)). Any law of the territories which abrogates, abridges or infringes this right would be held inoperative (sec. 2). As previously indicated, the right of equality before the law recognized in section 1(b) of the Declaration was interpreted in Attorney General of Canada v. Lavell, (1974) S.C.R. p. 1349 (1365-1367; 1372) as referring not to equality before the law as provided in the 14th Amendment of the Constitution of the United States, but rather to equality before the law as viewed by Professor A.C. Dicey in his "rule of law" principles. Therefore, "equality before the law under the Bill of Rights means equality of treatment in the enforcement and application of the laws of Canada before the law enforcement authorities and the ordinary courts of the land...".

Article 27:

Territorial law does not restrict the right of members of any ethnic, religious or linguistic group to enjoy their own culture, to profess and practice their own

religion, or to use their own language in community with other members of their group. Protection against restriction of the rights recognized in the present Article is afforded by section 1(c), (d), (e) and (f) of the Canadian Bill of Rights which accords to all individuals, without discrimination by reason of race, national origin, colour, religion or sex, the following rights: freedom of religion, freedom of speech, freedom of assembly and association, and freedom of the press. In the context of the present Article, any law of the territories construed by the courts to abrogate, abridge or infringe any of the previously enumerated freedoms would be inoperative.

B. EXAMINATION OF PROVINCIAL LAW

1. ALBERTA

Introductory

The most important human rights legislation in Alberta is contained in The Alberta Bill of Rights and The Individual's Rights Protection Act. The preambles to both statutes are noteworthy, and their similarity to the preamble of the International Covenant is striking. The Alberta Bill of Rights states that "the free and democratic society existing in Alberta is founded upon principles that acknowledge the supremacy of God and upon principles, fostered by tradition, that honour and respect human rights and fundamental freedoms and the dignity and worth of the human person". The Individual's Rights Protection Act states that "recognition of the inherent dignity and the equal and inalienable rights of all persons is the foundation of freedom, justice and peace in the world"; and that "it is recognized in Alberta as a fundamental principle and as a matter of public policy that all persons are equal in dignity and rights without regard to race, religious, beliefs, colour, sex, age, ancestry or place of origin". These statutes are further significant in that they are given paramountcy over all other acts of the Legislature of Alberta.

Article 1

The Province of Alberta accepts the principles enunciated in this article.

Articles 2, 26

Section 1 of The Alberta Bill of Rights provides:

It is hereby recognized and declared that in Alberta there exist without discrimination by reason of race, national origin, colour, religion or sex, the following human rights and fundamental freedoms, namely:

- (a) the right of the individual to liberty, security of the person and enjoyment of property, and the right not to be deprived thereof except by due process of law;
- (b) the right of the individual to equality before the law and the protection of the law;
- (c) freedom of religion;
- (d) freedom of speech;
- (e) freedom of assembly and association; and
- (f) freedom of the press.

The Act goes on to provide that every law of Alberta, existing or future, shall be so construed and applied as not to abrogate abridge or infringe any of these rights unless it is expressly declared that it operates notwithstanding The Alberta Bill of Rights. The Bill is essentially a declaratory and inter-



pretative statute, and does not contain any prohibitions or procedure for enforcement.

The Individual's Rights Protection Act provides that no person shall publish or display any notice, sign, symbol, emblem or other representation indicating discrimination because of race, religious beliefs, colour, sex, age, ancestry or place of origin; no person shall discriminate with respect to any accommodation, services or facilities customarily available to the public because of race, religious beliefs, colour, sex, ancestry or place of origin; no person shall discriminate with respect to the renting of any commercial or dwelling unit because of race, religious beliefs, colour, sex, ancestry or place of origin; no employer shall have different rates of pay for male and female employees doing similar or substantially similar work; and no employer shall discriminate in employing another person because of race, religious beliefs, colour, sex, marital status, age (defined as meaning any age of forty-five years or more and less than sixty-five years), ancestry or place of origin. The latter prohibition, however, does not apply with respect to a refusal, limitation, specification or preference based on a bona fide occupational qualification. There is no reference in the Act to discrimination based on language or political opinion.

The enforcement mechanism of the Act is the Alberta Human Rights Commission, which has the following functions:

- (a) to forward the principle that every person is equal in dignity and rights without regard to race, religious beliefs, colour, sex, age, ancestry or place of origin,
- (b) to promote an understanding of, acceptance of and compliance with this Act,
- (c) to research, develop and conduct educational programs designed to eliminate discriminatory practices related to race, religious beliefs, colour, sex, age, ancestry or place of origin, and
- (d) to encourage and co-ordinate both public and private human rights programs and activities.

The Commission must investigate and endeavour to effect a settlement of any complaint of an alleged contravention of the Act. If the Commission is unable to effect a settlement, the responsible Minister shall, on the request of the Commission, appoint a board of inquiry to investigate the matter. If the board of inquiry finds the complaint to be justified, it must recommend the course of action it thinks ought to be taken; and the Commission must again attempt to effect a settlement. If the Commission is again unsuccessful, it must deliver its files and records to the Attorney General, who may apply to the Supreme Court of Alberta for an enforcement order. The Judge hearing the matter holds an inquiry *de novo*, and may subsequently issue an enforcement order or an injunction, order compensation to be paid, or levy fines.

The Act also provides that every other law of Alberta is inoperative to the extent that it authorizes or requires

the doing of anything prohibited by the Act, unless it is expressly declared that the other Act operates notwithstanding this Act. The prohibitions contained in the Act apply to the Crown and every agency and servant thereof..

The Province of Alberta has also appointed an Ombudsman, who has statutory jurisdiction to investigate any decision, recommendation or act relating to a matter of administration by any government department or agency, or by any officer, employee or member thereof. The Ombudsman conducts his investigation in private, but has the right to compel testimony and the production of documents. He must make a report to the appropriate Minister and to the department or agency concerned if he concludes that any decision, recommendation or act was contrary to law; unreasonable, unjust, oppressive, or improperly discriminatory; based wholly or partly on a mistake of law or fact; wrong; or based on a discretionary power which was exercised for an improper purpose or on irrelevant grounds. The Ombudsman may make such recommendations as he thinks fit, and may request the department or agency to notify him within a specified time of the steps that it proposes to take to give effect to his recommendations. If no adequate and appropriate action is taken within a reasonable time, the Ombudsman may send a copy of his report and recommendations to the provincial cabinet and to the Legislature.

The Proceedings Against the Crown Act provides that a claim against the Crown may be enforced as of right without the grant of a fiat. The Crown is subject to the same liability in tort as a private person in respect of a tort committed by its officers or agents; in respect of breach of duties owed to servants or agents; in respect of breach of duties attaching to the ownership or use of property; and under any statutory obligation. The Court may grant relief by way of declaratory orders, damages, costs, and interest, but cannot grant injunctions, specific performance, or an order for the recovery or delivery of property.

If a person who desires to enforce his rights does not have sufficient funds to do so, he may apply for legal aid. The legal aid plan is not protected by statute; it operates under section 4 of The Legal Profession Act, which provides that the Attorney General and the Law Society of Alberta may enter into an agreement for the operation by the Law Society of a legal aid plan in civil and criminal matters for persons in need.

### Article 3

The Alberta Bill of Rights declares that the human rights and fundamental freedoms recognized therein exist without discrimination by reason of sex; and The Individual's Rights Protection Act prohibits discrimination on the basis



of sex for all of the activities listed. However, sexual discrimination in employment is permissible in the case of a domestic employed in a private home, or a farm employee residing in the private home of the farmer. The Interpretation Act provides that words importing male persons include female persons.

In 1930, the Province of Alberta enacted The Sex Disqualification Removal Act, which provides that a person shall not be disqualified by sex or marriage from the exercise of a public function, from being appointed to or holding a civil or judicial office or post, from entering or assuming or carrying on a civil profession or vocation, or for admission to an incorporated society. The Act further states that the provisions had effect from September 1st, 1905, the date when Alberta entered Confederation. Under The Married Women's Act, a married woman has the same property, tort and contractual rights and obligations as if she were unmarried. A husband and wife can sue each other over property disputes, but not in respect of a tort.

Under The Domestic Relations Act, a husband may be ordered to maintain his wife; a wife is not under a similar obligation. Amendments were passed in 1977, putting both spouses in an equal position, but these have not yet been proclaimed.

#### Article 4

Under The Disaster Services Act, the provincial Cabinet may declare a state of emergency, emergency being defined as "a present or imminent event which requires prompt co-ordination of action or special regulation of persons or property to protect the health, safety or welfare of people or to limit damage to property". Upon the making of the declaration, the Minister may do all things necessary to combat the emergency, including the utilization of property, requiring qualified persons to render aid, travel restrictions, entering on private property, and conscripting persons needed to meet the emergency. When private property is utilized or damaged, compensation must be paid. Municipal authorities have similar powers with respect to a state of local emergency.

The Act provides that the Minister or his officials and employees and members of a local authority or employees, are not liable for damage caused through action taken under the Act, but that the Minister and his officials and employees are liable for neglect of duty and misuse of authority in carrying out their duties under the Act.

#### Article 5

Section 2 of The Individual's Rights Protection Act provides that no person shall publish or display before the

public any notice, sign, symbol, emblem or other representation indicating discrimination for any purpose because of race, religious beliefs, colour, sex, age, ancestry or place of origin. The provisions shall not be deemed to interfere with the free expression of opinion upon any subject. The provisions do not apply to the display of a sign identifying facilities customarily used by one sex; to the display by a political, religious or ethnic organization not operated for private profit of a notice or representation indicating its purpose or membership qualification; or to an employment application or advertisement with a specification or preference based on a bona fide occupational qualification, as long as, in each case, the notice, sign, symbol, emblem or other representation is not derogatory, offensive or otherwise improper.

#### Article 6

The right to life is supported in Alberta by numerous statutes concerning health and by welfare legislation designed to ensure basic necessities to all persons. All residents are entitled to basic health services under The Alberta Health Care Insurance Act and to hospitalization under The Alberta Hospitals Act. The Social Development Act makes provision for financial and other assistance to ensure that no person will lack the goods and services essential to health and well-being. Other statutes are concerned with specific diseases or various physical disabilities.

Alberta has also enacted The Emergency Medical Aid Act providing that in an accident or emergency, a physician or registered nurse voluntarily and without expectation of compensation or reward rendering medical services or first aid assistance not at a hospital or other place having adequate facilities, and any other person voluntarily rendering first aid assistance at the scene of the accident or emergency, are not liable for damages for injuries or death, unless caused by gross negligence.

#### Article 7

Any unauthorized punishment of, or experimentation on, an individual would give rise to a civil action for damage, or to a criminal prosecution. If the action involved the conduct or performance of duty of a police officer, the matter could be investigated under the provisions of The Police Act.

Prisoners are subject to The Corrections Act, which provides that the director of each correctional institution shall establish a classification and selection committee to assess inmates and to assign them to appropriate training or treatment programs "taking into account the needs of the inmate, the good order, internal management and security of the institution and the safety of the community". Employment and training programs may be established for inmates outside of the institution. The director must also appoint a panel of three staff members to conduct disciplinary hearings for the



purpose of reviewing breaches by inmates of regulations or rules and determining appropriate punishment.

Under the Regulations adopted pursuant to The Corrections Act, employees must maintain discipline of inmates firmly and impartially, must not use humiliating tactics or harassing techniques, and must deal with inmates in a manner designed to encourage their self respect and personal responsibility. All searches of inmates must be carried out in such a manner as to respect the dignity of the inmate as far as possible without interfering with the thoroughness of the search. Force is not to be used by an employee unless essential to maintain or restore order or to prevent acts of violence, and in any event no more force than is necessary shall be used.

Medical transplants are governed by The Human Tissue Gift Act, which provides that an adult who is mentally competent to consent and is able to make a free and informed decision may consent in writing to the removal from his body of tissue (including an organ) and its implantation in the body of another living person. An adult may also consent that his body be used after his death for therapeutic purposes, medical education or scientific research. The same consent may be given by close relatives if the person has died or is incapable of giving consent by reason of injury or disease and his death is "imminent, and the relatives have no reason to believe that the person would

have objected thereto".

#### Article 8

After a declaration of a state of emergency under The Disaster Services Act, any qualified person may be required to render aid of such type as he may be qualified to provide, and persons generally may be conscripted to meet the emergency. Under The Forest and Prairie Protection Act, a forest officer or fire guardian may require any able bodied adult person not exempted by regulations to assist in fighting a fire. Under The Corrections Act, the director of a correctional institution must cause every inmate to be engaged in an employment program if the inmate is medically fit.

#### Article 9

The Alberta Bill of Rights recognizes and declares that in Alberta there exist without discrimination by reason of race, national origin, colour, religion or sex, the right of the individual to liberty, security of the person and enjoyment of property, and the right not to be deprived thereof except by due process of law; and the right of the individual to equality before the law and the protection of the law.

The rights of persons accused of provincial offences are protected by The Summary Convictions Act, which adopts the summary conviction procedure of the Criminal Code, and by the common law. Anyone improperly arrested, detained, or

imprisoned would have a civil action for damages.

Persons suffering from mental disorder and in a condition of danger to themselves or others may be detained under The Mental Health Act. A certificate of a physician or therapist is sufficient to detain a person for twenty-four hours. Certificates issued by a therapist and a physician, or by two physicians, after separate examinations, are sufficient to detain a person for one month, and such detention may be renewed. A Judge may order a person to be examined, and a peace officer may convey a person to a facility for examination. When a person becomes a patient, he must be informed of the reason for admission, and given a written statement of the authority for his detention and his right to apply to a review panel. He may apply to a review panel for release, and has the right to be present with his representative. He may also appeal further to the Supreme Court of Alberta.

Persons may also be ordered to be detained for treatment under The Tuberculosis Act or The Venereal Diseases Prevention Act; and may be quarantined under The Public Health Act.

#### Article 10

The provisions of The Corrections Act designed to ensure that prisoners be treated with humanity and dignity, and that efforts be made for their rehabilitation, have been

described under Article 7.

Under The Child Welfare Act, an apprehended child detained pending the disposition of his case shall not be confined in a correctional institution, lock-up or police station, and shall not be placed or allowed to remain in company with adult prisoners. The Director of Child Welfare may declare any place to be a detention centre for the reception, detention, custody, examination, care, treatment, education or rehabilitation of children pending the disposition of their cases by the Court. A child who is apprehended for juvenile delinquency and placed in a detention centre must be charged and brought before a Judge as soon as practicable. After the hearing, the juvenile may be returned to his parents or committed to the Director of Child Welfare as a temporary ward of the Crown.

#### Article 11

There is no law in Alberta authorizing imprisonment merely on the ground of inability to fulfil a contractual obligation.

#### Article 12

Liberty of movement generally exists in Alberta, but may be restricted under The Disaster Services Act, if a state of emergency is declared; under The Forest and Prairie



Protection Act, where fire danger warrants closure; under The Forests Act, in connection with a forest recreation area or forest recreation trail; and under The Forest Reserves Act.

#### Articles 13, 14, 15

The rights enunciated in these Articles generally fall under federal jurisdiction; insofar as they concern provincial matters they are protected by the adoption of federal criminal procedure under The Summary Convictions Act and by common law principles. The right of the individual to equality before the law and the protection of the law is one of the fundamental freedoms listed in The Alberta Bill of Rights. Subsection 23 (2) of the Interpretation Act provides that:

"Where an enactment is repealed in whole or in part and other provisions are substituted therefor,...

- (e) when any penalty, forfeiture or punishment is reduced or mitigated by any of the provisions so substituted, the penalty, forfeiture or punishment if imposed or adjudged after the repeal shall be reduced or mitigated accordingly."

#### Article 16

All persons are entitled to recognition before the law but a person does not have full legal status until he attains the age of majority on becoming eighteen years old. Under The Mentally Incapacitated Persons Act, the Court may commit

the custody of persons of unsound mind and the custody and management of their estates to a committee. A similar order may be made for persons who through mental infirmity arising from disease, age, habitual drunkenness, the use of drugs or other cause are incapable of managing their affairs.

#### Article 17

The Province of Alberta does not have a general privacy statute giving a right of action whenever anyone unreasonably violates the privacy of another. It does have a Defamation Act which codifies and simplifies procedures in libel and slander actions, and provides that where defamation is proved damage is presumed.

There are numerous statutes which prevent public disclosure of information acquired under their authority, particularly health and welfare legislation. These include The Alberta Health Care Insurance Act, The Alberta Hospitals Act, The Mental Health Act, The Alcoholism and Drug Abuse Act, The Cancer Treatment and Prevention Act, The Venereal Diseases Prevention Act, The Child Welfare Act, The Juvenile Court Act, The Maintenance and Recovery Act, The Vital Statistics Act, and The Ombudsman Act.

The Reports of Judicial Proceedings Act restricts reports of proceedings on civil actions involving marriage disputes to very basic information such as names, charges and defences, submissions of law, and the decision. No reporting

of any kind is permissible of proceedings under The Child Welfare Act. Under the latter statute, legal proceedings are closed to the public; certain proceedings under The Domestic Relations Act may be so ordered.

A few statutes deal with the confidential nature of certain communications. The Ombudsman Act provides that a letter from a person in custody on a charge or after conviction, or from a mental patient, must be forwarded unopened to the Ombudsman by the person in charge of the place or institution. The Mental Health Act provides that a communication written by or to a patient shall not be opened, examined or withheld, or its delivery obstructed or delayed. The Corrections Act provides that, subject to The Ombudsman Act, the director of a correctional institution does have the right to open, examine and withhold any letter, parcel or other matter to or from an inmate, but if he does so, he must advise the inmate concerned.

The Petty Trespass Act makes it an offence to trespass upon privately owned land with respect to which one has had notice by word of mouth or in writing, or by posters or signboards, not to trespass.

#### Article 18

Freedom of religion is one of the fundamental freedoms recognized in The Alberta Bill of Rights, and discrimination because of religious beliefs is prohibited in all of the

activities included in The Individual's Rights Protection Act.

Denominational schools are constitutionally protected in Alberta by Section 17 of The Alberta Act, 1905. Under The School Act, Protestant or Roman Catholic minorities may establish denominational schools, and are entitled to a share of the property tax support. A pupil is excused from attendance at any school if he is absent on a holy day of the religious denomination to which he belongs. A school board may prescribe religious exercises and may permit religious instruction, but a parent may demand that his child be excluded.

Under The Child Welfare Act, a parent surrendering a child for adoption may state a preference that the child be brought up in a specific religious denomination or faith, and all reasonable efforts must be made to comply with that preference. In custody applications under The Domestic Relations Act, the Court may make such order as it thinks fit to ensure that an infant is brought up in the religion in which the parent or other responsible persons has a legal right to require that the infant be brought up.

#### Article 19

The Alberta Bill of Rights recognizes and declares the existence of freedom of speech and of the press. The Individual's Rights Protection Act prohibits the publication or display of any notice, sign, symbol, emblem or other



representation indicating discrimination because of race, religious beliefs, colour, sex, age, ancestry or place of origin, but stipulates that this shall not be deemed to interfere with the free expression of opinion upon any subject. If what is said or written about another is untrue and constitutes libel or slander, an action for damages may be brought under The Defamation Act.

Special protection for freedom of expression is given to members of the Legislative Assembly by The Legislative Assembly Act, which provides that no member is liable to any civil action or prosecution, arrest, imprisonment or damages because of any matter brought before the Assembly by petition, bill, resolution, or motion, or anything said by him before the Assembly.

The Amusements Act provides for censorship of all films in Alberta, and makes it an offence to exhibit a film until it has been approved for exhibition by the board of censors. Under section 163 of The Municipal Government Act, a municipal council may prohibit the posting or exhibition of placards, play-bills, posters, writing, pictures, or drawings that are indecent or may tend to corrupt or demoralize, on any wall or fence or elsewhere on or adjacent to a highway or public place.

#### Article 20

There are no provincial laws prohibiting propaganda for

war or advocacy of national racial or religious hatred, but inciting hatred against any group is prohibited by the Criminal Code.

#### Article 21

The Alberta Bill of Rights recognizes and declares the existence of freedom of assembly, but there are no statutes regulating the exercise of the right. Some legislation could be utilized to restrict freedom of assembly, such as The Petty Trespass Act, making it an offence to trespass upon privately owned land, Crown land subject to a disposition under The Public Lands Act, or a garden or lawn, with respect to which notice is given by word of mouth, or in writing, or by posters or signboards, not to trespass; or The Highway Traffic Act, providing that every pedestrian crossing a roadway must cross as quickly as reasonably possible without stopping or loitering or otherwise impeding the free movement of vehicles. It would be possible, however, for a Court to negate these offences in a situation involving peaceful assembly by applying the paramountcy provision of The Alberta Bill of Rights.

#### Article 22

The existence of freedom of association is recognized and declared in The Alberta Bill of Rights, and trade union rights are extensively dealt with in The Alberta Labour Act. Under the latter statute, an employee has the right to be a

member of a trade union and to participate in its lawful activities, and to bargain with his employer through a bargaining agent; and an employer has similar rights with respect to an employers' organization. There are numerous provisions in the Act concerning labour-management rights and procedures, and unfair practices, all designed to ensure that union rights are freely exerciseable.

Trade union rights for civil servants are covered by a separate statute, The Public Service Employee Relations Act, under which there is no right to strike or lockout. Separate legislation also exists for firefighters and policemen under The Firefighters and Policemen Labour Relations Act.

#### Article 23

The Marriage Act gives a right to marry to every person of eighteen years, and between sixteen and eighteen years with certain consents. Persons are prohibited from marriage where a declaration has been issued under The Mentally Incapacitated Persons Act that the party is of unsound mind or incapable of managing his affairs, or where there is a certificate of incapacity under The Mental Health Act, unless a doctor certifies in writing that the party has the capacity to understand the nature of the contract of marriage and the duties and responsibilities relating thereto. It is also an offence to solemnize a marriage where a party is under the influence of alcohol or a drug.

The Married Women's Act provides that a married woman has the same property and contractual rights as an unmarried woman, and both husband and wife may bring action against each other for the protection and security of their own separate property. Under The Dower Act, however, a married person cannot dispose of the homestead without the written consent of his or her spouse. The Maintenance Order Act provides that husbands and wives are primarily responsible for each other's maintenance.

The Alberta Legislature has recently enacted The Matrimonial Property Act giving the Court unrestricted discretion to make an order dividing property owned by either spouse if the marriage is ending or the parties have separated or one is giving away or dissipating his or her property. The order may even cover the capital appreciation of property owned before the marriage by one of the parties or acquired by gift or inheritance. The Court may at any time also grant exclusive possession of the matrimonial home to a spouse. However, the Act has not yet been proclaimed into force.

Both the father and mother are responsible for the maintenance of a child under The Domestic Relations Act.

#### Article 24

The Domestic Relations Act provides that unless otherwise ordered by the Court, the father and mother are the joint guardians of their children, and the mother of an illegitimate



child is its sole guardian. Under The Maintenance Order Act, both the father and mother are responsible for the maintenance, including adequate food, clothing, medical aid and lodging, of a child under sixteen.

The Child Welfare Act contains extensive provisions concerning the welfare and protection of children. Part 2 of the Act deals with the apprehension, custody and care of neglected children. Anyone who believes that a child has been abandoned, deserted, physically ill-treated or is in need of protection must report the grounds of belief to the Director of Child Welfare or to a child welfare worker, and the obligation exists even though the ground for belief is confidential or privileged information. Anyone having the care, custody, control or charge of a child, who ill-treats, neglects, abandons or harmfully exposes the child, is guilty of an offence. A parent or person who is guilty of an act or omission contributing to a child being or becoming a neglected child or likely to make him a neglected child is also guilty of an offence.

Under The Alberta Labour Act, no person under the age of fifteen years shall be employed without the written consent of his parents or guardian and the approval of the Board of Industrial Relations, and in any event not during normal school hours. However, under The Child Welfare Act the Child Welfare Commission may grant a license for the employment of a child over twelve in any entertainment where the Commission is

satisfied of the fitness of the child to take part in the entertainment without injury to life, limbs, health, education or morals, and that proper provision has been made to secure the health and kind treatment of the child.

The Vital Statistics Act requires the registration of the birth of every child born in the Province within ten days after the birth.

#### Article 25

To be qualified to vote under The Election Act, one must be a Canadian citizen, eighteen years of age, and have resided in Alberta for at least six months prior to the day on which the election writ was issued. Judges and prisoners are disqualified from voting. A person is qualified to be a candidate if he or she is qualified as an elector. The qualifications for voters are similar in The Municipal Election Act and in The School Election Act.

Appointments to the public service are governed by The Public Service Act, the stated policy of which is that "each appointment to, and promotion within, the public service shall be predicated upon the selection of the most suitable applicant but wherever possible preference shall be given to in-service applicants in order to establish a career service and to provide incentive and reward for good work performance and self-development" The manner of appointment described in the Act does not provide for equal access to positions in

the public service. The Minister, with the approval of the provincial cabinet, has established a classification plan defining and designating the classes of positions in the public service. The Public Service Commissioner, in-service promotion (where due to the necessity for prior experience or due to a formal in-service training plan it is unlikely that better outside applicants can be found); departmental competitions (where there are a large number of well-qualified applicants within the department); limited competition (where a large number of well-qualified applicants exist within the service); and open competitions (where sufficient in-service applicants would not normally be forthcoming to ensure a good selection). The Commissioner may exempt an appointment from competition if satisfied that the person to be appointed has specialized knowledge or qualification which are unlikely to be bettered through competition, or the urgency of the requirement is such as to render the competition procedure impracticable. An employee or a department head may appeal the allocation of a position in a classification plan, but not an outside applicant.

#### Article 27

Under The Cultural Development Act, the Minister charged with the administration of the Act may engage in many activities and make grants "to promote, encourage and co-ordinate the orderly cultural development of Alberta". The Provincial

Treasurer may also guarantee repayment of loans made by a person "for any activity or matter related to culture".

The School Act provides for a system of tax-supported denominational schools. English is the ordinary language of instruction in all schools, but a school board may also employ teachers to give instruction in French or any other language to all pupils whose parents have requested it. A school board may prescribe religious and patriotic exercises, and permit religious instruction, for pupils in a school, but any parent can have his child excluded. A local advisory board can also require the board of a division to institute religious instruction or instruction in the French language.

School attendance is compulsory under The School Act, but a pupil is excused if an inspector or a superintendent certifies in writing that the pupil is under efficient instruction at home or elsewhere, if the pupil is absent on a holy day of the religious denomination to which the child belongs, or if the pupil is attending an approved private school.



## 2. BRITISH COLUMBIA

### Introduction

This chapter deals with the legislation of the Province of British Columbia which is considered relevant to the implementation of the provisions of the Covenant.

### Article 2

The main legislation affecting human rights is the Human Rights Code of British Columbia (S.B.C. Chap. 119, 1973) which prohibits discrimination in the following areas: public facilities, purchase of property, tenancy premises, employment advertisements, employment, and membership in trade unions, employers' and occupational associations. In all these areas discrimination on the basis of race, religion, colour, sex, ancestry and place of origin is prohibited.

Discrimination on the basis of marital status is prohibited in all areas but public facilities.

Discrimination in the areas of employment advertisements, employment, and membership in trade unions, employers' and occupational associations is prohibited also on the grounds of political belief and age (between the age of 45 and 65).

It is also prohibited to discriminate between male and female employees in wages.

The Code contains provisions against discrimination in employment and in membership in trade unions, and employers' and occupational associations on the basis of a conviction for a criminal or summary conviction charge.

In the areas of public facilities, employment and membership in trade unions, employers' and occupational associations, the Code prohibits discriminatory practices unless there is 'reasonable cause' for discrimination. Board of Inquiry cases have held that this general clause will provide protection for the handicapped, homosexuals and other classes of people not specifically mentioned.

The Code also prohibits discriminatory publication "in any manner prohibited" by the Act.

With respect to remedies, as required by paragraph 3 of Article 2 of the Covenant, the Human Rights Code provides basically two approaches for violations of provisions of the Code: one by way of complaint to the director of the Human Rights Branch and the other by means of summary conviction proceedings for a contravention of the Code.

The director is empowered to inquire, investigate and attempt to settle the dispute relating to a particular

complaint (Section 15). If the director is unable to settle the dispute, he is required to report to the Minister of Labour, who may then refer the complaint to a board of inquiry (Section 16). Section 17 provides the following:

"(1) Where a board of inquiry is of the opinion that an allegation is not justified, the board may dismiss the allegation;

(2) Where a board of inquiry is of the opinion that an allegation is justified, the board of inquiry shall order any person who contravened this Act to cease such contravention, and to refrain from committing the same or a similar contravention, and may

- (a) order a person who contravened the Act to make available to the person discriminated against such rights, opportunities, or privileges as, in the opinion of the board, he was denied contrary to this Act;
- (b) order the person who contravened the Act to compensate the person discriminated against for all, or such part as the board may determine, of any wages or salary lost, or expenses incurred, by reason of the contravention of this Act; and
- (c) where the board is of the opinion that
  - (i) the person who contravened this Act did so knowingly or with a wanton disregard; and
  - (ii) the person discriminated against suffered aggravated damages in respect of his feelings or self-respect,

the board may order the person who contravened this Act to pay to the person

discriminated against such compensation not exceeding five thousand dollars, as the board may determine.

(3) A board of inquiry may make such order to costs as it considers appropriate.

(4) Where an order is made under sub-section (3) or clause (b) or (c) of sub-section (2), the commission or the person who was discriminated against and in whose favour the order is made may file a certified copy of the order with the Supreme Court or with a County Court, and, thereupon, the order has the same force and effect, and all proceedings may be taken on it, as if it were a judgment of the appropriate court for the recovery of a debt of the amount stated in the order against the person named in it. 1973 (2nd Sess.), c.119, s.17."

The legislation of British Columbia provides for appeals from the decisions of the board up to the Court of Appeal of the province.

In addition to the procedure described above, the Code also provides for prosecution of a person who contravenes the Code or who fails to obey an order of a Board of Inquiry. Such action constitutes an offence under the Act, the penalty for which is a fine for individuals of not more than \$1,000 and for corporations, trade unions, employers' organizations, or employment agencies, of a fine of not more than \$5,000 (Section 24).

Additional remedies will be available under the Ombudsman Act, S.B.C. 1977, Ch. 58 unproclaimed. This Act applies to government departments, crown corporations,



municipalities and regional districts, the Islands Trust, schools, colleges and universities, hospitals and professional statutory societies. Under s.7 the Ombudsman on a complaint or on his own initiative may investigate decisions or recommendations, acts or procedure of the bodies mentioned above. Under s. 19 the Ombudsman will then make a report of his findings to the offending authority with a recommendation for appropriate action. Under s. 21 if no appropriate action is taken, the Ombudsman will then report to the Lieutenant Governor-in-Council and in the final resort to the Legislature.

The provincial Crown may be sued for the wrongful acts of its servants. The Crown Proceedings Act, S.B.C. 1974, Ch. 24, in s. 2(a) abolished the Petition of Right process and in sub-section (c) made the Crown subject to all liabilities to which it would be liable if it were a person. One caveat is that under s. 3(2)(a) the Act does not authorise an action against the Crown where the servant was acting reasonably and in good faith while purporting to discharge responsibilities of a judicial nature or connected with the execution of judicial process.

### Article 3

The foregoing discussion of the Human Rights Code has outlined the legislative prohibition against discrimination based on, inter alia sex, which in this respect is an implementation of the principle of equality of rights of men and women. In particular, the Code prohibits discriminatory rates of pay based on sex, for "similar or substantially similar work" (Section 6).

With regard to the equality of men and women, reference should also be made to the Status of Men and Women Amendment Act S.B.C. 1975, c.73. This Act amended twenty-seven separate pieces of legislation in order to remove adverse or discriminatory references based on sex. In other words, references to adverse sexual distinctions in the application of British Columbia law have been eliminated.

Marriage is dealt with under the Marriage Act, R.S.B.C. 1960, Ch. 232 and various other statutes. The Family Relations Act S.B.C. 1972, Ch.20, s.6 considers the wife as an unmarried person when divorce, separation or annulment occurs and the husband is not thereafter liable for her acts or contracts. The Children of Unmarried Parents Act, R.S.B.C. 1960, Ch. 52, s. 5, provides for

application by an unmarried mother to the superintendent of child welfare for advice and protection. Provision is made to compel maintenance and care by the putative father. The Equal Guardianship of Infants Act, R.S.B.C. 1960, Ch. 130, s. 4 removes all disabilities of married women with respect to guardianship. S. 5 provides that a husband and wife living together are joint guardians and gives neither a paramount right. S. 20 allows the mother of an infant to make an application under the Act without a next friend. The Wife's Protection Act, R.S.B.C. 1960, Ch.407, s.3, allows a wife to charge the title of a homestead so that under s.4 disposition of the homestead without the wife's consent is void.

#### Article 4

British Columbia has passed legislation relating to situations of public emergency. The relevant legislation in this regard is the Civil Defence Act R.S.B.C. c.55, which was the subject of amendments in 1973, including a change in the title to "The Emergency Programme Act".

This Act gives the Lieutenant Governor in Council power to perform acts or make regulations "as he may consider necessary or advisable for purposes of, or in anticipation of, any matter referred to in the preamble

or this section". Since the preamble of the original Act was repealed in 1973, the exact status of this provision is not entirely clear. It is clear, however, that pursuant to this legislation the Lieutenant Governor in Council, that is the Executive Branch of government of the province, has extraordinary powers in time of public emergency. There are no limitations on these powers and the Act itself provides that it prevails over any other legislation in case of conflict. There is no legislative guarantee of non-derogation from the articles listed in paragraph 2 of Article 4 of the Covenant. Section 5(1)(i) provides for compensation.

#### Article 5

These principles are well established. For example, with regard to paragraph one, British Columbia does have legislation which prevents abuse of freedom of expression when the exercise of those rights has the effect of destroying or impairing other rights and freedoms. The Human Rights Code referred to above prohibits the publishing or displaying of "any notice, sign, symbol, emblem, or other representation indicating discrimination or an intention to discriminate". Similarly the Libel and Slander Act R.S.B.C. c.218 restricts the exercise of



freedom of speech or expression when it is damaging to the integrity of the person.

#### Article 6

Legislation dealing with requirements for health and hospital care indirectly contributes to the implementation of this article. Relevant legislation in this respect includes the following:

The Health Act R.S.B.C. c.170;

The Health Insurance Act R.S.B.C. c.171;

The Hospital Act R.S.B.C. c.178.

The provision of medical and hospital services to the needy is included in the Guaranteed Available Income for Need Act, S.B.C. 1976, Ch. 19. In s. 1 the definition of income assistance provided by the Act includes sub-section (3) aid in money or kind to municipalities, boards, commissions, organisations or persons providing aid, care or health services to indigent, sick, elderly or infirm individuals and sub-section (5) health care services. S. 7 provides that there be no discrimination in the administration of income assistance and s. 12 provides for handicapped persons' health benefits. The Medical Services Act, S.B.C. 1967, Ch. 24, s. 9 provides

that the consolidated revenue fund shall pay a medical services premium to the amount of 90% where a person has made no income tax payment and to the amount of 50% where such payment is less than \$1,000.

#### Article 7

A person who has suffered a violation of his physical and mental integrity may bring civil action for damages for assault and battery.

With respect to a violation of Article 7 on the part of the public authority, in particular police officers, the criminal and civil sanctions referred to above are equally available to the individual whose rights under this article have been violated. With specific reference to misconduct on the part of a police officer, the Police Act 1974, c.64 provides for an inquiry procedure which is open to the public. Under this procedure disciplinary action may be taken against the officer who has committed a violation. Remedies include an order to pay damages to the victim and the disciplinary tribunal set up under the terms of the Act has the power to dismiss a police officer found guilty of misconduct.

In addition to the Police Act, a Disciplinary Code has been adopted in the province to regulate police behaviour. The Code sets out a number of "disciplinary defaults" including abuse of authority (e.g. unnecessary violence) and improper use of fire-arms.

The treatment of inmates in provincial correctional institutions is governed by the Corrections Act, S.B.C. 1970, Ch. 10. S. 12 provides **for** inspection of correctional centres by the Minister. Under s. 53, the Director of Inspection and Standards Division shall: sub-section (d) investigate complaints under the Act from inmates. Under sub-section (f) the Director has the powers and privileges of a Commissioner under the Public Inquiries Act.

#### Article 8

The law of British Columbia does not permit compulsory labour with the exception of a provision of the Emergency Programme Act (formerly known as the Civil Defence Act and referred to above in the discussion under Article 4). Under the Act the government is empowered to "employ or summon the assistance of any person between the ages of 18 and 60 (with certain exceptions) for the

purpose of carrying out the provisions" of the Act. Thus, in certain situations a form of compulsory labour is permissible, but this would occur only in extraordinary circumstances when a state of emergency had been officially declared. There is no other legislation in British Columbia which would authorize forced or compulsory labour. It should be noticed that under Article 8 (3) (iii) of the Covenant "any service exacted in cases of emergency or calamity threatening the life or well-being of the community" is excepted from the general prohibition contained in Article 8. The provision of the Emergency Programme Act, referred to above, would fall under this exception.

The power to employ inmates is contained in the Corrections Act, s. 15 which states that rules made by the Lieutenant Governor-in-Council may include sub-section (1)(c)"... employment of inmates". In addition, under the Forest Act, R.S.B.C. 1960, Ch. 153, s. 125 (3), "any officer or constable of the RCMP or officer or employee of the forest service may employ or summon any person" between the ages of 18 and 60 except for those employed in certain trades or who are physically unfit to fight forest fires. Under sub-section (4) the refusal to work is an offence under the Act.



Article 9

As allegations of arbitrary detention and arrest are usually directed toward public officials, i.e. police, the relevant legislation dealing with abuse of police powers can be cited in this connection as a means of securing liberty and security of the person. The legislative provisions of British Columbia discussed under Article 7 above may also be cited with respect to this article.

An individual has a right to a civil action for false imprisonment. The Summary Convictions Act, R.S.B.C. 1960, Ch. 373, s. 6(a) guarantees a prisoner the right to a telephone call. S. 49(3) states that a person who has been ordered to enter into a recognisance and who has remained in jail for two weeks due to his refusal, may apply to a Judge to review the committal order. S. 59 provides for punishment only after conviction and only as prescribed. Under s. 101 the Criminal Code is applied where express provision for any specific matter is not made in the Act.

With regard to mental hospitals, the Mental Health Act, S.B.C. 1964, Ch. 29, s. 21, provides that the Director of a mental health facility shall not admit a

person if, sub-section (b) in his opinion the person is not mentally disordered or is a person who cannot be cared for or treated appropriately in the facility. S. 22 provides that individuals admitted informally are dischargeable, sub-section (3) within 72 hours of notification of their desire to leave the facility. Under s. 24, an individual admitted involuntarily under s. 23, shall be discharged one year after his admission unless the authority is renewed. S. 30 provides for an application to the Court for discharge where there is not sufficient reason for admission or detention.

#### Article 10

With regard to the treatment of detained persons and prisoners, the Corrections Act 1970, c. 10 applies. This Act states that one of the purposes of the correction service is the "safe custody" of inmates committed by the court to a correctional centre.

With regard to paragraph 3, another of the express purposes of the corrections service is the "supervision, treatment and training of inmates with a view to their ultimate rehabilitation in society".

With regard also to the provision of paragraph 3, to the effect that juvenile offenders be segregated from adults, it is to be noted that the Protection of Children Act R.S.B.C., c.303 prohibits the confinement of children under 17 with adults.

#### Article 11

There is no provision whereby an individual may be imprisoned for failure to fulfill a contractual obligation in British Columbia.

#### Article 12

Freedom of movement is not restricted by the law of British Columbia, except in extraordinary cases where a state of emergency has been proclaimed under the Emergency Programme Act.

#### Article 14

For offences of provincial legislation and the imposition of penalties or punishments prescribed by provincial statutes, the Summary Convictions Act R.S.B.C., c.373 applies. This Act sets out the procedure to be followed on the arrest and detention of individuals who

have been charged with violations of provincial statutes. The Act contains a number of procedural safeguards respecting arrest, detention and judicial procedures.

#### Article 15

This principle has been incorporated into the Interpretation Act of British Columbia, 1974, c.42.

There is no provincial legislation which gives prisoners the benefit of lighter penalties enacted subsequent to the conviction of a prisoner.

#### Article 16

Recognition of legal personality is extended to all citizens of British Columbia, unless specific legislation has been enacted excepting certain categories of persons from this classification. The two most important exceptions are children and mental incompetents whose interests are represented by parents or specially appointed guardians or trustees.

With respect to patients in mental institutions, the Mental Health Act provides for periodic review of detention decisions. In addition, the Act sets out the right to apply for a judicial order prohibiting



the admission of a person to a mental institution or requiring his/her discharge. The prerogative writs including habeas corpus also apply when the legal incapacity is imposed as a result of judicial decision.

With regard to children, their legal interests are considered to be represented by their parents or guardians and the law does not recognize them the right to enter into contracts or to bring a legal action before a court of law in their own names. There are exceptions to this, in that the law recognizes that an infant can contract for "necessaries" and be bound, but other contracts to which an infant is a party are voidable or void. An example of the latter type of contract would be a contract for labour or service, with the exception that in British Columbia the Infants' Act R.S.B.C., c.193 provides that a child who does not reside with his parent or guardian and is over the age of 16 years is fully liable under an engagement to perform serviceable work.

#### Article 17

Privacy is protected in British Columbia by the Privacy Act 1968, c.39 which creates two "statutory torts" which are actionable in a court without proof of damage. These are wilful violation of privacy and the unauthorized

commercial use of a name or portrait. The Act specifically covers electronic eavesdropping and surveillance whether or not proof of trespass is put forward.

Another piece of legislation which has as its object the prevention of interference with privacy, is the Personal Information Reporting Act 1973, c.139 which regulates the use of information on consumers collected by a "reporting agency" which is defined under the Act as a person who for gain or profit furnishes reports. The Act requires every such reporting agency, at the request of a consumer, to disclose accurately to the consumer the nature and substance of all information on that individual held by the agency. If the consumer is not satisfied with the contents of the information relating to him, he may complain to the Registrar of reporting agencies. The Registrar may apply to a Judge of the Supreme Court of British Columbia for a compliance order against any agency that contravenes the Act.

Interference with privacy in the sense of attacks upon honour and reputation are actionable in British Columbia pursuant to the Libel and Slander Act R.S.B.C., c.218.

The privacy of medical records is protected under the Medical Act, R.S.B.C. 1960, Ch.239. S. 49 provides for an inquiry by the Medical Council into complaints concerning the conduct of a member of the Medical Society. (S. 48 provides for erasure of an individual's medical registration for commission of an indictable offence).

#### Article 18

Discrimination on the basis of religion is prohibited for all the activities included in the Human Rights Code of British Columbia. Discrimination on the basis of political belief is also prohibited in the Code in all areas related to employment.

Section 11 of the Labour Code of British Columbia (S.B.C. 1973 c.122) provides that in a case where a person refuses to join a union on religious grounds, the Labour Relations Board may exempt him from joining, but will hold back an amount of his salary equal to the union dues payable.

Article 19

Freedom of expression and freedom of opinion are principles which are well established in British Columbia and which are subject to very few restrictions. Those restrictions which exist are in keeping with paragraph 3(a) Article 19, in that they are designed to protect the rights and reputations of others. In this connection reference should be made to the Libel and Slander Act 1969, c.16 and the Human Rights Code of British Columbia 1973, c.119. The restriction on freedom of expression contained in the Human Rights Code is to be found in Section 2 of that Act which reads as follows:

"no person shall publish or display before the public, or cause to be published or displayed before the public any notice, sign, symbol, emblem, or other representation indicating discrimination or an intention to discriminate against any person or class of persons in any manner prohibited by this Act."

This restriction is followed in the act by an insertion recognizing freedom of expression. This is to be found in sub-section 2 of Section 2 and reads as follows:

"notwithstanding sub-section (1), any person may, by speech or in writing, freely express his opinions on any subject."



Under the Legislative Assembly Privileges Act, R.S.B.C. 1960, Ch. 215, s. 2, members of the Legislative Assembly enjoy the privileges, immunities and powers that were enjoyed by members of parliament in the United Kingdom in 1871; that is, the whole range of parliamentary privilege.

Under the Motion Pictures Act, S.B.C. 1970, Ch. 27, it is the duty of the film classification director to review, classify, edit or prohibit the showing of such films as he deems appropriate. It should be pointed out that s. 6 of the Act provides for an Appeal from his decision to an Appeal Board and further that the intent of this legislation is to move away from censorship and into the realm of classification.

#### Article 20

Section 2 of the Human Rights Code as quoted above, under Article 19, is relevant. Section 7 of the Code further provides that:

"No person shall use or circulate any form of application for employment, publish or cause to be published any advertisement in connection with employment or prospective employment, or make any written or oral inquiry of an applicant that

- (a) expresses either directly or indirectly any limitation, specification, or preference as to the race, religion, colour, sex, marital status, age, ancestry, or place of origin of any person: or
- (b) requires an applicant to furnish any information concerning race, religion, colour, ancestry, place of origin, or political belief. 1973 (2nd Sess.), c.119, s.7; 1974, c.87, s.18: 1974, c.114, s.6."

#### Article 21

There is no provincial legislation relating to freedom of assembly.

#### Article 22

The Labour Code of British Columbia in Section 2 provides that:

- "2. (1) Every employee is free to be a member of a trade union and to participate in its lawful activities.
- (2) Every employer is free to be a member of an employers' organization and to participate in its lawful activities."

Other relevant sections of the Code are as follows:

- "4. (1) Except with the consent of the employer, no trade union and no person acting on behalf of the trade union shall attempt, at the employer's place of employment during working hours, to persuade an employee of the employer to join, or not to join, trade union."
- "5. No person shall use coercion or intimidation of any kind that could reasonably have the effect of compelling or inducing any person to become or refrain from becoming, or to continue or to cease to be, a member of a trade union."

#### Article 23

There is no restriction in the law of British Columbia on the right of adults to marry and this right applies equally to both sexes. The Marriage Act R.S.B.C., c.232 allows for marriage either by licence or by publication of banns.

A minor may not marry unless consent of his or her parents or guardian is obtained. Section 29 (1) of the Marriage Act requires consent in writing. The official guardian or a judge of the Supreme or County Court may give consent when such consent is otherwise unobtainable by reason of death.

The only remedy for marriage entered into under duress is a suit for an annulment of the marriage. Absence of consent renders a marriage void.

The Family Relations Act gives the Supreme Court of British Columbia jurisdiction over maintenance of spouses and children. Under this Act the court is empowered to order a spouse to maintain the other spouse and the children of the marriage during the marriage.

During marriage a woman is guaranteed an equal right to enjoy her property as if she were a "femme sole" (i.e. single woman) by the Married Women's Property Act R.S.B.C., c.233. The Act also provides, in Section 29, that any question between a husband and wife as to the title or possession of property, may be resolved upon summary application to a Judge of the Supreme Court.

#### Article 24

The most important statute with respect to the protection of children is the Protection of Children Act R.S.B.C., c.303. This Act sets up a system whereby children who are neglected, abandoned or mistreated may be brought before a judge who is empowered to make an Order as to their custody. This includes commitment



to the Children's Aid Society. It is the duty of the society to provide "suitable foster homes" for the children that are committed to its care. The judge may also make an Order that the local authority in the area concerned provide financial support for the maintenance of the child.

The Provincial Court Act 1969, c.28 establishes a separate division of the Provincial Court of British Columbia entitled Family Division. The purpose of this division of the Court is described in Section 14 of the Act as follows:

"Assisting and guiding families and individual members of families in overcoming social and matrimonial problems and for the purpose of dealing with children and their parents or guardians in conflict with the law."

This special division of the court is also empowered to deal with matters arising under the Juvenile Delinquents' Act (Canada). The scope of this Act has been described in the federal portion of the report. The Provincial Court Act also provides in Section 19 that:

"each municipality shall make provision for an adequate home or homes or other child care resources for the temporary housing of children away from home and who are in conflict with the law in the municipality."

The Control of Employment of Children Act R.S.B.C., c.75 prohibits the employment of children except under special circumstances in which it is necessary to obtain the permission of the Minister of Labour who "shall set forth the conditions upon which the child may be employed and the number of hours per day for which he may be employed". The Act also provides for penalization of employers who employ children contrary to its provisions. The parents or guardians of children who are employed contrary to the provisions of the Act are also guilty of an offense.

An important piece of recent legislation with respect to child welfare and which also has relevance to Articles 3 and 23 of the Covenant, is the Family Relations Act 1972, c.20. This Act sets out the rights of spouses in terms of maintenance upon dissolution of the marriage without distinction as to sex. Under Section 16 of the Act, "every parent is liable to support and maintain his children". The Act also contains extensive procedural provisions on enforcement of maintenance orders.

Two other statutes which relate to the welfare of children in British Columbia are the Official Guardian Act R.S.B.C., c.268 and the Curfew Act R.S.B.C., c.91.

Article 25

The British Columbia Provincial Elections Act provides guarantees for free elections and procedures whereby the names of qualified persons are entered on the voters' list. Section 79 of the Act provides that where a registered voter is omitted from the voting list by error, upon his proving this to the satisfaction of the Deputy Returning Officer, he is entitled to vote. The Act also allows for challenges to names appearing on the voters' list and provides for hearing to determine such questions. The Act also provides for recounts when a particular election is challenged. Under Article 55 every registered qualified voter who has resided in the province for a period of twelve months and who is not disqualified in any way for an election "shall be qualified to be nominated as a candidate at any election". Municipal electors and elections are covered in ss. 31-147 of the Municipal Act, R.S.B.C. 1960, Ch. 255.

Access to employment opportunities in the Public Service is open. Under Section 34 of the Public Service Act 1973, c.143 "except where otherwise expressly provided in this Act or the Regulations all appointments to the Public Service shall be based on merit and upon examinations, reports, tests, records, ratings or recommendations

pursuant to this Act and the Regulations". Remedies for discrimination in employment in the Public Service are to be found in the Human Rights Code, described above.

#### Article 26

The legal system of British Columbia is based on the principle that all persons are equal before the law and have equal access to remedies which are impartially administered. The Human Rights Code described earlier in this report prohibits discriminatory treatment in a number of areas and provides remedies for persons who allege that they have been victims of such discrimination.

In 1975 the province passed the Legal Services Commission Act, the object and purpose of which is "to see that legal services are effectively provided to, and readily obtainable by, the people of British Columbia, with special emphasis on those people to whom those services are not presently available for financial or other reasons". The Act established a commission to plan the development of legal services in the province. This legislation ensures that no one is denied access to the courts to enforce his rights by reason only of the lack of adequate financial resources.



Article 27

The Human Rights Code of British Columbia prohibits discrimination on the basis of, among other things, race, religion, colour, ancestry and place of origin. Details have been given under Article 2 above.

### 3. MANITOBA

#### Introductory

The Manitoba Human Rights Commission has recently conducted a review of provincial statutes and regulations to identify any inconsistencies with international human rights legislation. Recommendations are being made to government to amend any laws which appear to be in conflict.

#### Article 1

The Province accepts the principles enunciated in this Article.

#### Articles 2, 26

The principles of non-discrimination and equality before the law are well enshrined in The Human Rights Act, which prohibits discrimination in many activities because of race, nationality, religion, colour, sex, age, marital status, physical handicap, ethnic or national origin or family status. Discrimination based on other factors is also prohibited in some activities. Prohibited conduct includes the publication, display or broadcasting of any notice, sign, symbol or other representation indicating discrimination or exposing a person to hatred, on the basis of the factors listed as well as on the basis of source of income or family status; discrimination in the sale of property; discrimination in contracts offered

to the public generally; and discrimination in employment or employment advertising, with the added prohibition here against discrimination on the basis of political belief. In the case of discrimination in employment, however, the provisions relating to sex, age, marital status, physical handicap or political belief do not apply if these factors are reasonable occupational qualifications and requirements for the position of employment.

In two areas of conduct, the provisions of the Act are more sweeping. No one may discriminate in any accommodation, service or facility customarily available to the public unless reasonable cause exists, and none of the first-named factors constitutes reasonable cause. Discrimination without reasonable cause is also prohibited in the renting of commercial or residential property, and the first-named factors and additionally "source of income" do not constitute reasonable cause. However, housing accommodation in a building, except that of an owner or his family, may be restricted to individuals of the same sex; and preference may be given to elderly persons in a building designed or used primarily for elderly persons.

The Manitoba Human Rights Commission is established by the same legislation, and it has power to receive or initiate complaints against violations of the Act. The Commission investigates all complaints and endeavours to effect a settlement. If it is unsuccessful, it may request the appointment

of a board of adjudication to settle the matter. The board, after a public hearing, may order compliance with the Act and the payment of compensation, penalties, or exemplary damages, and its orders may be enforced as court judgments.

Violators of the Act are also guilty of an offence, and subject to prosecution, but no prosecution may be instituted without the consent of the Minister responsible for the Act.

The Human Rights Act provides that it is binding on the Crown and every servant and agent of the Crown. A person aggrieved by the conduct of a government employee relating to a matter of administration may also utilize the wider provisions of The Ombudsman Act. The Ombudsman has the power to investigate and make a recommendation where it appears that an administrative act or decision has been contrary to law, unreasonable, unjust, oppressive, improperly discriminatory, based on a mistake of law or fact, wrong, or done for an improper purpose or on irrelevant grounds. The Ombudsman's report is given to the appropriate Minister and to the government department or agency concerned; and if no action is taken on the report within a reasonable time, a report may be made to the Provincial Cabinet and to the Legislative Assembly.

Under The Proceedings Against the Crown Act, action may be brought against the government without a fiat. The government is liable in tort as a private person would be in respect of torts committed by its officers or agents, in respect of duties owed to servants or agents, in respect of duties



attaching to the ownership, occupation, possession or control of property, and under any statutory obligation. Declaratory orders may be made against the Crown, but certain other orders cannot be made, such as an injunction, specific performance, order for the recovery of land, and execution.

In order to ensure that legal services are available to all Manitoba residents, the Legislature has established a Legal Aid Services Society to furnish, without charge, legal aid in civil and criminal matters, including appeals and matters before administrative tribunals, to any individual who is unable to pay therefor, or with partial charge to an individual who is able to pay a portion of the cost.

### Article 3

The Human Rights Act prohibits discrimination in all of the activities listed on the basis of sex, but in connection with the denial of any accommodation, service or facility provides that the sex of any person does not constitute reasonable cause unless it relates to the maintenance of public decency. In connection with discrimination in employment, the Act provides that the prohibition does not apply where sex is a reasonable occupational qualification and requirement for the position of employment.

The Employment Standards Act prohibits an employer from paying different wages to male and female employees in the same establishment if the work done by them is substantially

the same.

The Interpretation Act also provides that words in an enactment importing male persons including female persons.

Under The Dower Act, a married man cannot deal with his homestead without his wife's consent, and she must acknowledge apart from her husband that the consent was voluntarily executed by her of her own free will and accord without any compulsion on the part of her husband and that she was aware of the nature and effect of the document. Similarly, a married woman who owns the homestead cannot dispose of it without her husband's consent, but a separate acknowledgment by the husband is not necessary.

The Wives' and Children's Maintenance Act provides for payment of maintenance by a husband to his wife, which rights are not available to a husband against his wife.

#### Article 4

Under The Emergency Measures Act, the Provincial Cabinet may proclaim the existence of a state of civil disaster or a state of war emergency. After the proclamation of a state of civil disaster, the Cabinet may do all things necessary for the protection of persons or property from injury or loss, including the entry into any home, building, or other private property. Upon the proclamation of a state of war emergency, the Cabinet may do all things deemed necessary or advisable for the peace, order, and welfare of Manitoba, including the

appropriation, control and disposition of property by whomever owned, and the requiring of assistance of any person between the ages of eighteen and sixty years.

Other provisions dealing with emergencies are found in The Fires Prevention Act, The Manitoba Hydro Act, and The Manitoba Water Services Board Act, but none of these violate the provisions of Article 4.

#### Article 5

Section 2 of The Human Rights Act prohibits the publication, display, transmission or broadcasting of any notice, sign, symbol, emblem or other representation indicating discrimination or an intention to discriminate against a person, or tending to expose a person to hatred because of his race, nationality, religion, colour, sex, marital status, physical handicap, age, source of income, family status, or ethnic or national origin. However, nothing in this provision shall be deemed to interfere with the free expression of opinion upon any subject.

#### Article 6

Manitoba has substantial legislation to provide for the health of its residents and to ensure a minimum standard of living. The Health Services Insurance Act provides for the payment of hospital and doctors' services, and this is supplemented by The Health Services Act and The District Health and

Social Services Act, providing for the establishment and additional funding of social services and health programs, and by The Prescription Drugs Assistance Act.

Social allowances are paid to persons in need under The Social Allowances Act; and other funding legislation includes The Social Services Administration Act, The Blind Persons' Allowances Act, The Blind Persons and Deaf Persons Maintenance and Education Act, The Disabled Persons' Allowances Act, The Elderly and Infirm Persons Housing Act, and The Workers Compensation Act.

#### Article 7

The general principles of the law concerning assault and trespass would apply to any improper treatment or unauthorized experimentation, and any aggrieved person could bring an action for damages or lay charges under the Criminal Code. The Provincial Police Act also provides a complaint procedure to inquire into the conduct of any member of a police force.

Manitoba exercises jurisdiction over all persons sentenced to imprisonment for up to two years. Under The Corrections Act, in addition to the regular staff, specialized persons may be employed "to isolate, identify, classify, and treat the cause of antisocial behaviour and criminal conduct of inmates through the appropriate use of psychiatric, psychological, and social-work techniques and vocational and



academic education, religion, industry, and recreational services in an effort to enhance an inmate's ability to meet and overcome the recurring problems of everyday life." Inmates may be allowed to obtain employment, look after their business or families, attend educational or rehabilitative institutions, or undergo medical treatment or hospitalization. Each institution may establish rules respecting the conduct and discipline of inmates.

The Mental Health Act provides that any superintendent, officer, nurse, attendant or servant employed in a hospital or institution, or any person having the charge, care, control or supervision of a mentally disordered person, who ill-treats or wilfully neglects the mentally disordered person is guilty of an offence, and subject to fine or imprisonment.

Under The Human Tissue Act, persons of eighteen years may direct that their body may be used after death for therapeutic purposes or for medical education or research. Certain close relatives may make the same direction for a person who has died, or for a person incapable of making a request whose death is imminent.

#### Article 8

We have already seen that under The Emergency Measures Act, persons between eighteen and sixty years may be required to assist, upon the proclamation of a state of war emergency. Similarly, under The Fires Prevention Act, a fire guardian

may order any nearby male person over sixteen years to assist in extinguishing a forest, brush or grass fire. Under The Corrections Act, an inmate of a correctional institution may be required to work or perform duties within or outside the limits of the institution.

The law generally avoids ordering anyone to work for another, and a good illustration of this principle is the provision of The Queen's Bench Act that the court shall not grant an injunction that requires a person to work for or perform personal services for his employer; and that no person by reason of his refusal to provide personal services for his employer shall be held in contempt of court for failing to comply with a court order.

#### Article 9

Prosecution for provincial offences is governed by The Summary Convictions Act, which adopts many of the procedures of the Criminal Code. Anyone detained has the right to apply for a writ of *habeas corpus* to have the validity of his detention determined. Anyone unlawfully arrested, prosecuted, or imprisoned has an action for damages, and The Queen's Bench Act provides that such actions shall be tried with a jury unless the parties waive such trial.

Three further statutes bear on the right to liberty in Manitoba. A person may be confined under the provisions of The Mental Health Act upon the certificate of a duly qualified

medical practitioner, or if a staff psychiatrist decides that a non-compulsory patient at a hospital is dangerous to himself or others or requires further treatment. Such persons must not be detained for more than twenty-one days, but application can be made to the Director of Psychiatric Services, a Justice of the Peace, or a Magistrate to extend the time of detention. Provision is made for an appeal by any detained person or his relatives from any order or ruling to a Judge of the County Court. The provincial cabinet may also order that a prisoner, a person convicted of an offence, or a person acquitted of an offence because of insanity be admitted to hospital as a compulsory patient, and such a person cannot be discharged except by further order of the cabinet. Persons acting under the authority of the Act, and others responsible for confining a person, are protected from civil liability if they have acted in good faith and with reasonable care.

Under The Intoxicated Persons Detention Act, a peace officer who finds an intoxicated person in a place to which the public has access may take the person to a detoxification centre, where he may be held in custody for up to twenty-four hours.

Under The Narcotic Drug Addicts Act, a Justice may order a drug addict to be detained and treated in a hospital, if that appears desirable in the public interest.

Article 10

The philosophy of The Corrections Act is one of reformation and rehabilitation of the offender, and provision is made for the employment of specialists to treat the inmates and to enhance their ability to meet the recurring problems of everyday life. Programs exist allowing inmates to obtain outside employment, to look after business and family affairs, and to attend educational or rehabilitative institutions.

The Corrections Act provides that court proceedings involving a child shall be in private, and The Child Welfare Act provides that a child shall not be held in a correctional institution, lock-up, or police station, in the same room or cell in which an adult prisoner is held. The latter statute also makes provision for the establishment of a treatment panel, from whom the Director of Child Welfare must request a rehabilitation plan for each child committed to his care.

Article 11

A person cannot be imprisoned in Manitoba merely on the ground of inability to fulfil a contractual obligation.

Article 12

Restrictions on liberty of movement exist under The Emergency Measures Act, when a proclamation is issued proclaiming the existence of a state of civil disaster or a state of war emergency; under The Fires Prevention Act;



and under The Public Health Act, concerning quarantine.

Articles 13, 14, 15

Most of these rights fall under federal jurisdiction; insofar as they concern provincial offences they are generally upheld by the adoption of federal procedure under The Summary Convictions Act, and by common law rules.

There is no specific requirement that an accused person be informed of his right to legal assistance, although this would be done as a matter of practice in any serious matter. If the accused could not afford a lawyer, legal aid might be furnished to him without charge under The Legal Aid Services Society of Manitoba Act. There also is no requirement that an offender shall benefit from a subsequent change in the law imposing a lighter penalty.

Article 16

Under The Age of Majority Act, every person attains the age of majority, and ceases to be a minor, when he becomes eighteen years old. Everyone is entitled to recognition everywhere as a person before the law, but until the age of eighteen one does not have the right to control one's legal affairs. A Court may also determine the custody of a mentally disordered person, and provide for the custody and management of his estate.

Article 17

The right of privacy is protected in Manitoba by The Privacy Act, which provides that a person who substantially, unreasonably, and without claim of right, violates the privacy of another person, commits a tort against that other person; and that an action for violation of privacy may be brought without proof of damage. Privacy may be violated by surveillance, telephone-tapping, unauthorized use of name or likeness of voice for advertising or promotion, or unauthorized use of letters, diaries or other personal documents. In any action, the court may award damages, an injunction, an accounting of profits, or order the return of articles or documents.

Privacy and reputation is further protected by The Personal Investigations Act, which prohibits personal investigations without the express written consent of the subject of the investigation, or unless the subject is given written notice by the inquirer that a personal investigation was conducted and such notice is given within ten days of the granting or denial of a benefit for which the subject has applied. Certain kinds of information must not be contained in a personal report, and the contents may only be divulged to certain people. The subject of a report may demand the nature and source of information contained in his personal file, and may protest any information, thereby requiring the reporting agency to verify the information.

Procedures in a libel or slander action have been simplified by The Defamation Act, which provides that damage shall be presumed where defamation is proved. Section 19 of the Act provides a remedy in the case of group libel; it provides:

The publication of a libel against a race or religious creed likely to expose persons belonging to the race, or professing the religious creed, to hatred, contempt or ridicule, and tending to raise unrest or disorder among the people, entitles a person belonging to the race, or professing the religious creed, to sue for an injunction to prevent the continuation and circulation of the libel; and the Court of Queen's Bench may entertain the action.

Statutes dealing with health often provide for confidentiality of information. Thus The Health Services Insurance Act provides that information furnished to the Manitoba Health Services Commission or to the medical review committee respecting the relationship of a doctor to a patient or medical services rendered to a patient shall not be communicated to any person not legally entitled thereto.

Certain other statutes provide for confidential correspondence or communications. The Ombudsman Act provides that a letter to the Ombudsman written by a person in custody on a charge or after conviction, by an inmate of any hospital or mental institution, or by any person in custody of another person for any other reason must be immediately forwarded unopened. The Mental Health Act provides that every person

confined at a hospital or institution may communicate with any member of the Executive Council or of the assembly, with his attorney, or with any person appointed to inspect a hospital. Such communications shall not be examined, censored or withheld, but all other communications may be so dealt with at the discretion of the director or superintendent. The Corrections Act provides that information and communications obtained by a probation officer endeavouring to solve domestic problems are privileged even from court disclosure.

#### Article 18

Discrimination on the basis of religion is prohibited for all of the activities included in The Human Rights Act. Publication of a libel against a religious creed may be prevented by injunction under the terms of The Defamation Act.

There are provisions in a number of statutes which touch on and protect aspects of religious practice. The Religious Societies' Lands Act provides that a church or religious society may, in the name of trustees, hold land not exceeding three hundred acres to be used as a church or for religious purposes, and lands not exceeding twenty acres to be used for a cemetery. The Labour Relations Act provides that where an employee in a unit of employees for which a union is the bargaining agent is a member of a religious group which has as one of its articles of faith the belief that members of the group are precluded from being members



of or financially supporting any union or professional association, the union may agree to exempt the employee from any obligation to pay the regular membership dues payable. The Corrections Act provides that on the invitation of the inmate, a clergyman may visit an inmate of any correctional institution where he is lawfully detained at such times as may be arranged with the superintendent.

Unlike most provinces, Manitoba does not have a system of tax-supported denominational schools. The Public Schools Act does make provision for religious teaching in any public school upon resolution by the board of trustees or upon petition of a specified number of parents. Provision is also made for the employment of teachers of a certain faith upon petition of a specified number of parents. The Act states that public schools shall be entirely non-sectarian, that no separation of pupils by religious denominations shall take place during the secular school work, but that religious exercises may be held just after the opening of school in the morning or before the closing hour in the afternoon. All religious teaching and religious exercises are non-compulsory. The Act also provides that every clergyman who is a British subject is a school visitor in the municipality in which he has pastoral charge.

#### Article 19

The Human Rights Act prohibits the publication, display,

transmission or broadcasting of any discriminatory notice, sign, symbol, emblem or other representation, but further states that this shall not be deemed to interfere with the free expression of opinion upon any subject. The Act also prohibits discrimination in employment because of political beliefs.

The Queen's Bench Act also protects freedom of expression by providing that the court shall not grant an injunction that restrains a person in the exercise of his right to freedom of speech; and that the communication by a person on a public thoroughfare of information by true statements, either orally or through printed material or through any other means, shall be deemed to be the exercise of the right of that person to freedom of speech.

Members of the Legislative Assembly have extraordinary protection for their freedom of expression. The Legislative Assembly Act provides that no member is liable to any civil action or prosecution, arrest, imprisonment, or damages, by reason of any matter brought by him by petition, bill, resolution, motion or otherwise; or by reason of anything said by him before the assembly or any committee thereof.

Some limitation on freedom of expression results from The Amusements Act, which requires the classification of all films before they may be exhibited. Films may be restricted to viewing by persons over eighteen years, and all classifications must be properly advertised. In addition, certain film

advertisements may be removed if they are immoral, obscene or indecent, or depict certain types of criminal activity.

#### Article 20

As outlined earlier, advocacy of national, racial or religious hatred is prohibited by section 2 of The Human Rights Act, and group attacks could be enjoined by an injunction under section 19 of The Defamation Act.

There is no law prohibiting propaganda for war.

#### Article 21

Some protection of the right of peaceable assembly is afforded by The Petty Trespasses Act, which makes it a minor offence to trespass upon the property of another but goes on to provide:

Any person who, on any walk, driveway, roadway, square or parking area provided outdoors at the site of or in conjunction with the premises of which any business or undertaking is operated and to which the public is normally admitted without fee or charge, communicates true statements; either orally or through printed material or through any other means, is not guilty of an offence under this Act whether the walk, driveway, roadway, square or parking area is owned by the operator of that business or undertaking or by any other person or is publically owned, but nothing in this section relieves the person from liability for damages he causes to the owner or occupier of the property.

Parallel provisions are found in The Queen's Bench Act, which prohibits injunctions restraining freedom of speech, and extends that protection to communications on public

thoroughfares, whether privately or publicly owned.

## Article 22

Freedom of association in the trade union area is governed by The Labour Relations Act, which provides that every employee has the right to be a member of a union, and to participate in the activities and the organization of a union. Every employer has similar rights with respect to an employer's organization. In order to ensure that no one is discriminated against because of union membership or union activity, the Act then details numerous activities which constitute unfair labour practices. Substantial powers are given to the Manitoba Labour Board to remedy any unfair labour practice, including reinstatement of employees, compensation and general damages. The Act binds the Crown, but is subject to The Civil Service Act, which recognizes the Manitoba Government Employees' Association as the bargaining agent for the civil service.

Freedom of association of teachers and trustees is dealt with separately under The Public Schools Act, which guarantees the rights of teachers to be members and to participate in the activities of The Manitoba Teachers' Society; and the similar rights of school trustees concerning The Manitoba Association of School Trustees.



Article 23

Under The Marriage Act, every person of eighteen years is entitled to marry, subject to taking a medical examination. Mentally disordered persons cannot marry unless a psychiatrist certifies in writing that the person has the capacity to understand the nature of the contract of marriage, and the duties and responsibilities which it creates.

Under The Married Women's Property Act, a married woman has the same property and contractual rights as if she were unmarried. A husband and wife may sue each other for the protection and security of their property, or for tort.

Under The Wives' and Children's Maintenance Act, a husband is under an obligation to support his wife; the wife is not under a corresponding duty to support her husband. Both parents are under a legal obligation to support, maintain and educate their children up to the age of eighteen years.

Recently the Manitoba Legislature enacted two Bills which substantially altered the legal rights of parties to a marriage. The Marital Property Act provides that spouses have the right to have their assets divided equally on separation or divorce or where one commits an act of dissipation. Assets include not only assets acquired during the marriage and cohabitation, but also any appreciation of assets acquired before marriage. A court may vary the equal division of family assets if that division "would be grossly unfair or

unconscionable having regard to any extraordinary financial or other circumstances of the spouses or the extraordinary nature or value of any of their assets." The equal division of commercial assets may also be varied by a Court if that "would be inequitable having regard to any circumstance the court deems relevant". The Act also provides that spouses have an equal right, regardless of ownership, to the use and enjoyment of their marital home, and of any other family asset ordinarily used or enjoyed by both of them.

The Family Maintenance Act provides that spouses have the mutual obligation to contribute reasonably to each other's support and maintenance without regard to conduct, although "a court may in determining the amount of support and maintenance have regard to a course of conduct that is so unconscionable as to constitute an obvious and gross repudiation of the marriage relationship." Either spouse may apply for a maintenance order where the other is in breach of any obligation under the Act, or where the applicant desires an order for separation or an order for custody of or access to any child of the marriage. In determining what order should be made, a court must consider the financial needs, financial means, earning capacity, standard of living, and contribution, including domestic contributions, of each spouse. The Act applies to an unmarried couple who have cohabited for at least a year and there is a child of the union.

Article 24

Under The Child Welfare Act, the father and mother have joint custody and control of their children; and both are responsible for their support, maintenance and education under that statute as well as under The Wives' and Children's Maintenance Act.

Part III of The Child Welfare Act contains numerous provisions for the protection of children, to the extent of taking them away from their parents if they are in need of protective guardianship. Anyone who inflicts cruelty or ill treatment upon a child in his care, custody, control or charge, or who fails to protect such a child, is guilty of an offence. Anyone who has information of the abandonment, desertion, ill treatment or need for protection of a child is guilty of an offence if he does not report the information to the Director of Child Welfare or to a child caring agency.

The Vital Statistics Act provides that the birth of every child born in the Province shall be registered within ten days after the birth of the child.

Article 25

The Election Act of Manitoba provides that every person, male or female, is entitled to be placed on the list of voters for an election if he or she is a Canadian citizen or other British subject, is 18 years of age, and has

resided in Manitoba for at least twelve months immediately prior to the date fixed for polling at the election. Judges, mental patients and prisoners are disqualified from voting. The qualifications of a candidate are almost identical.

Under The Legislative Assembly Act, the legislative assembly cannot continue for longer than five years, and there must be a session of the Legislature at least once each year.

Appointments to the public service are made by the Civil Service Commission on the basis of section 13(2) of The Civil Service Act:

Selection for appointment, promotion or transfer to a position shall be based on merit, with a view to developing a civil service comprising well qualified personnel with abilities, skills, training, and competence required to advance from the level of initial appointment through a reasonable career consistent with the type of work and the classes of positions pertinent thereto.

Any unsuccessful candidate for a position who is an employee and who thinks that the appointment of another person to the position was based on matters other than merit may appeal the appointment. Where there is more than one qualified candidate for a position, preference may be given to veterans. The Act further provides that no person shall improperly, directly or indirectly, solicit or endeavour to influence the Commission concerning the appointment, assignment or promotion of any person. Anyone doing so shall be deemed unworthy of



the appointment, assignment or promotion; and if he is a civil servant he is liable to immediate dismissal.

The Civil Service Act also lays down rules for the political conduct of public servants. A public servant may speak or write on behalf of a candidate or political party in any election if he does not reveal confidential information. He may not solicit funds for a provincial or federal political party or candidate. He may seek nomination as a candidate in a provincial or federal election, and is entitled to a leave of absence without pay. If elected he is entitled to a leave of absence without pay for five years. No person in a supervisory capacity over a civil servant or over a person employed by a government agency, or authorized to employ, promote or reclassify such a person, shall coerce or intimidate that person into supporting or not supporting a candidate or a political party.

#### Article 27

The protection afforded to ethnic and religious minorities by The Human Rights Act, The Defamation Act, and The Public Schools Act has already been discussed. The latter statute also provides that English and French are the languages of instruction in public schools, but a school board may authorize the limited use of other languages. If there are sufficient pupils, parents have the right to petition for the use of English or French.

Section 23 of The Manitoba Act, 1870, the constitutional document which established the Province of Manitoba, provided that either English or French could be used in the Legislature or in any court; and that statutes must be in both languages. These provisions were subsequently changed by the Manitoba Legislature, providing that only English shall be used in legislative records and journals, court pleadings or processes, and statutes. The constitutional validity of the latter provisions has been challenged recently in the courts.

The Museums and Miscellaneous Grants Act makes provision for grants to persons, organizations or associations for cultural purposes.

#### 4. NEW BRUNSWICK\*

##### Part I

##### Article 1

The right to self-determination is not specifically protected or affected by any statute or case law in New Brunswick.

##### Part II

##### Article 2

Human Rights legislation, enacted in New Brunswick in 1971 (S.N.B. 1971, c. 8, appearing as R.S.N.B. 1973, c. H-11, as amended, S.N.B. 1974 (Supp.), c. 20 and S.N.B. 1976, c. 31) to be cited as the Human Rights Code, recognises in its preamble that:

"...the fundamental principle that all persons are equal in dignity and human rights without regard to race, colour, religion, national origin, ancestry, age, marital status, or sex, is a governing principle sanctioned by the laws of New Brunswick;"

The legislation states in recitals that these principles have been confirmed by a number of previous enactments of the New Brunswick Legislature, the purpose of the Human Rights Code itself being to codify and extend these enactments and to simplify their administration.

The Human Rights Code would directly prevent discrimination based on the enumerated classifications therein as

\* Report prepared by the Government of New Brunswick.

required under Article 2, in the fields of employment; occupancy of commercial or dwelling units; sale of property; accommodation, services or facilities; publications and displays; membership in professional associations, business or trade associations. However, the Human Rights Code does not contain a general provision against "distinction of any kind" nor does it prevent discrimination on the basis of "political or other opinion" or "property".

Additionally, while the legislation appears initially to prevent discrimination based on nationality, it does retain in subsection 7(2) the application of statutory provisions restricting membership in a professional association or business or trade association to Canadian citizens or British subjects.

In compliance with paragraph 3 of Article 2, the Human Rights Act provides a remedial procedure for an individual who claims to have been aggrieved by a violation of the Code. The procedure found judicial approval in the case of Re Naugler and New Brunswick Liquor Corporation, (1976), 15 N.B.R. (2d) 324. The Human Rights Commission, established under the Act, is competent to undertake an investigation of a complaint of discrimination violating the provisions of the



Act. If the case has merit and if the Commission is unable to effect a settlement between the parties in the matter of the complaint, the Minister of Labour may appoint a Board of Inquiry to conduct an investigation and to recommend to the Commission what course ought to be taken with respect to the complaint. The Commission may then issue an order to carry into effect the recommendations of the Board. Every order must be complied with, and any person who fails to do so is guilty of an offence, and on summary conviction is liable to a monetary fine.

With particular reference to Article 2, paragraph 3(a) and violations committed by persons acting in official capacities, the Ombudsman Act, R.S.N.B. 1973, c. 0-5, gives to an Ombudsman the power to investigate an act or omission of a government department or an agency and to make recommendations to the administrative head of the department or agency, and if satisfactory results are not achieved, the report and recommendation may go to the Lieutenant-Governor-in-Council and thereafter to the Legislative Assembly. This procedure can be an effective remedy against improper use of discretionary powers.

However, the power of the Ombudsman is limited. The Ombudsman does not have the authority to investigate complaints

against the federal government, the courts, or the Lieutenant-Governor-in-Council (the Provincial Cabinet). Nor does he have the right to handle a complaint where there is a right of appeal or review which has not been exercised. Thus, his power is limited to examining the decisions of provincial government officials and to determining whether a decision about which a complaint has been received is unreasonable, unjust, oppressive or inequitable.

### Article 3

Over the past few years, various provisions in legislation which upheld unequal rights for men and women have been repealed or replaced. For example, in 1974, an Act to Amend the Liquor Control Act, S.N.B. 1974 (supp.), c.26 corrected a situation of sexual discrimination where a tavern licensee was permitted to sell beer to only adult males, and a female person was prohibited in any manner from acting in connection with the sale, handling, or serving of liquor in a tavern.

The Minimum Employment Standards Act, R.S.N.B. 1973, c. M-12, provides that an employer shall permit a female to be absent from her work during a period of six weeks from the time of being delivered of a child. During this period

of time an employer may not give notice of dismissal arising from her absence, nor may he do so until the employee has been absent for seventeen weeks. In addition the Act prevents discrimination against female employees in that an employer cannot refuse to employ a female person who is pregnant for reasons arising solely from her pregnancy.

However, several provisions remain which deny the equality of men and women in the enjoyment of civil rights. The Deserted Wives and Children Maintenance Act R.S.N.B. 1973, c. D-8 contains no provision which would entitle a deserted husband to seek maintenance from his wife. The Dower Act, R.S.N.B. 1973 c. D-13 preserves a wife equitable interest in her husband's property, yet there is no corresponding right in a husband. Both of these Acts are under review by the Law Reform Division of the Department of Justice in a study of Matrimonial Property.

Furthermore, it may be that some existing legislation which is discriminatory in nature is still in force merely from oversight or through the fact that more pressing and relevant matters face the legislature. Examples of minor cases of discrimination would be the Partnership Act, R.S.N.B. 1978, c. P-4, where a reference is made to a "widow of a partner".

Naturally this should be replaced by "spouse" to cover the situation where a partner is a woman. The same situation arises in the Arrest and Examinations Act, R.S.N.B. 1973, c. A-12 where provision is made for service of notice upon the "wife" of the plaintiff.

#### Article 4

The Emergency Measures Act, R.S.N.B. 1973, c. E-7, deals with emergency and disaster situations on a provincial level. It empowers the Minister of Justice, in prescribed circumstances, to declare that a state of emergency exists in the Province or in any municipality therein and empowers a designated Minister to take defined actions. The Minister, municipality or a person acting under authority of the Minister are not liable for damage arising out of any action taken pursuant to the Act, but the Minister may award compensation for damage as the Lieutenant-Governor-in-Council orders.

#### Article 6

The inherent right to life is protected by the law of Canada. However, it is protected indirectly through the Province as well. The Public Hospitals Act, R.S.N.B. 1973, c. P-23



provides that no hospital shall refuse to admit as a patient any person who from sickness, disease, injury, or other cause is in need of treatment. There are exceptions where the patient's life is not in danger or where the hospital's facilities are inadequate for the treatment required, for example.

As well through the Advanced Life Support Services Act, S.N.B. 1976, c. A-3.01, section 4 provides that no action shall be brought under the Act against a person who administers medical treatment directly or indirectly with respect to the provision of an advanced life support system, unless it is shown the person acted negligently or in bad faith, nor against any authorized person, unless it is shown that that person failed to comply with a term or condition prescribed by the Minister, or did not meet the standards prescribed by regulation.

#### Article 7

Although there are no statutory provisions relating to this Article, there would be remedies available through both criminal and civil procedures in the Province or through the Ombudsman. The Police Act, S.N.B. 1977, c. P-9.2 provides that a municipality maintaining a police force is liable in respect of a tort committed by a member of the police force in the

performance of his duties in the same manner as a master is liable in respect of a tort committed by a servant in the course of his employment. It is suggested that this is applicable to trespass of the person, as well as to false imprisonment, giving rise to tort remedies.

#### Article 8

In general, New Brunswick law meets the requirements of Article 8. Slavery was abolished in New Brunswick and made illegal by the Parliament of Great Britain, through the Slavery Abolition Act, 1833 (3 & 4 Will. 4, c. 73), which abolished slavery in all the British Dominions as from August 1, 1834.

There are provisions in provincial statutes which impose labour as a punishment for a crime or a quasi-criminal offence or which require services to be performed in cases of emergency. The Corrections Act, R.S.N.B. 1973, c. C-26 provides that treatment for the rehabilitation of a person may include hard labour even if it is not specifically stated in the sentence. The Children of Unmarried Parents Act, R.S.N.B. 1973, c. C-3 provides hard labour in the situation where a father has been imprisoned for failure to comply with an order in respect of care and custody of a child.

The Forest Fires Act, R.S.N.B. 1973, c. F-20 and the Emergency Measures Act, R.S.N.B. 1973, c. E-7 both require compulsory service in cases of emergency.

It should be noted that all of the above Acts are in compliance with Article 8. As well, the remedy of specific performance is not in conflict with the Article.

#### Article 9

The law of New Brunswick is basically in compliance with Article 9. With respect to paragraph 3, the Summary Convictions Act provides that an arrested person be brought before a judge as soon as possible unless, before an appearance before a judge, the peace officer is satisfied that the individual should be released unconditionally, or with the intention of compelling an appearance by way of a summons.

Regarding paragraph 4, the Habeas Corpus Act, R.S.N.B. 1973, c. H-1 provides for an application to a judge of the Supreme Court or of the County Court for purposes of determining if imprisonment is legal. The judge may order the immediate discharge from prison if he determines the detention is not lawful.

With reference to paragraph 5 of Article 9, the victim of unlawful arrest in New Brunswick has a remedy under tort law for false imprisonment. There is no statutory right to compensation for a person unlawfully arrested or detained. As well, a person who is lawfully arrested has no remedy by way of compensation for his arrest even if his innocence is proven in court.

Problems arise with regard to Article 9, when one examines New Brunswick law in relation to paragraph 1. The most serious violation is to be found in the Mental Health Act, R.S.N.B. 1973 c. M-10 in that it grants to certain individuals a power to arbitrarily commit others to a mental institution, and furthermore it fails to provide proper safeguards and appeal procedures for those who have been involuntarily committed and detained.

Under Section 8 of the Act a physician may sign a form which will commit a person to a mental institution as an involuntary patient for a period of one month. It appears that the physician is held only to the standard of reasonable care and good faith. It is only upon renewal of a committal certificate that any appeal procedures become possible. Thus, one cannot appeal an initial application to commit a person to a mental institution, and the individual is subject to examination for one month.



A problem also arises when considering the Treatment of Intoxicated Persons Act, R.S.N.B. 1974, c. T-11.1 in that too much discretion may be left in the hands of a peace officer and there may not be sufficient safeguards and appeal procedures within the Act.

The Child Welfare Act, R.S.N.B. 1973, c. C-4 provides for the apprehension of children who are in need of protection or who are tending to become delinquent by reason of inadequate control. Where a child is detained, he must be brought before a judge within fifteen days of apprehension and the parents must be notified of the apprehension and the reasons for such.

#### Article 10

Under New Brunswick's system of law, only a very small percentage of accused persons are remanded pending trial. Those who are detained are generally, because of the nature of the offences charged, classified within provincial institutions as security risk inmates. As facilities in these institutions to deal with security risk inmates are in short supply, it is sometimes impossible to separate an accused person from convicted individuals, thus the Corrections Act, R.S.N.B. 1973, c. C-26 provides that every correctional institution is a lawful place for the confinement and treatment of persons

being detained for trial or under sentence. However, there is a section within the Act for the provision of adequate segregation and appropriate treatment whereby the Director may order that a person charged with an offence and confined in a correctional institution or a person who has been sentenced to serve a term of imprisonment in a correctional institution be removed to any other correctional institute.

More precise provisions are made regarding juvenile offenders. Where a child is detained under the Child Welfare Act, R.S.N.B. 1973, c. C-4 in a correctional institution, a judge shall order that the child shall not be detained in the same room as adult persons. As well the Training School Act, R.S.N.B. 1973, c. T-11 provides a place of confinement for boys over the age of 12 and under 16, for an indefinite period of time not exceeding 5 years. The purpose of the school is for detention, custody and training with a view to education, reformation and rehabilitation. However, facilities are limited and the child may be detained in a correctional institution or by the Children's Aid Society until there is room in the School. It should be noted that a similar training school for female juvenile offenders is not presently in existence in New Brunswick.

Generally, practice in New Brunswick falls within the requirement of Article 10, paragraph 3. Section 18 of the Corrections Act provides:

"Confinement in any correctional institution is to include appropriate treatment for the rehabilitation of the individual."

In addition the Corrections Act provides for the establishment of classification centres, being:

"...an institution established under Section 12 for the study and diagnosis of persons under sentence to determine the type of institution and type of treatment most suitable to effect the rehabilitation of those persons".

#### Article 11

Under the Arrest and Examinations Act, R.S.N.B. 1973, c. A-12, a debtor in prescribed circumstances can be arrested. The problem of legal remedies of the unsecured creditor is currently being considered in the Consumer Protection Law Reform Project, with recommendations having been made in Volume II of the third Report of the Consumer Protection Project presented in 1976, for elimination of all remaining provisions for imprisonment of a person in a civil action, excepting provisions for contempt of court. Abstracting

this further, when a case involving the non-performance or breach of a contract goes to the courts, the remedy of specific performance may be granted. A failure to comply with the order of the court could result in imprisonment for contempt of court (arising from failure to fulfill a contractual obligation). This result is to be considered highly unlikely, yet still possible.

#### Article 12

The right to legislate regarding freedom of movement lies with the federal government, yet there are provisions within the provincial legislation which restrict freedom of movement in exceptional circumstances. The Forest Fires Act, provides that during forest fire season the Minister may designate certain areas of forest land (not directly accessible by public highways) as restricted travel areas. The Health Act, R.S.N.B. 1973, c. H-2 provides that a medical health officer may cause a person to be quarantined, and the Emergency Measures Act, R.S.N.B. 1973, c. E-7 can affect the freedom of movement as well. All three pieces of legislation however, are within the parameters of permitted restrictions for the public good.



Article 14

The rights set forth in Article 14 are well established and protected by the law of Canada and New Brunswick. The Summary Convictions Act, R.S.N.B. 1973, c. S-15 provides for a hearing before a judge in an open court. As well, the proceedings may be conducted in person, or by a solicitor. Through the Act as well, the accused person must be brought before a judge as soon as possible. Under subsection 29 (1) there cannot be an adjournment in the proceedings of more than eight days without the consent of both parties. It appears that all judgments rendered in New Brunswick are a matter of public record with the exception of decisions concerning certain juvenile offences and matrimonial and custody problems.

Of particular note in New Brunswick is the Legal Aid Act, R.S.N.B. 1973, c. L-2. The Act provides that a person of modest means is given the opportunity to have a solicitor represent him, thus attempting to ensure that all persons are given equal opportunity to defend themselves. If the applicant is able to contribute toward the cost of legal assistance he must do so, but if the individual is not capable of so doing, then free legal assistance is available. The provisions relating to civil legal aid have not yet been proclaimed, thus at present legal aid can be obtained only in criminal matters.

Paragraph 3(f) of Article 14 is complied with in certain respects by the Official Languages of New Brunswick Act, R.S.N.B. 1973, c. 0-1, which allows the individual the choice of using either official language (English or French) in a court proceeding.

#### Article 15

Article 15 is more pertinent to federal legislation, but the New Brunswick statutes neither expressly confirm nor offend the provision.

#### Article 16

The right to legal personality is recognised at law in the province. Special provision is made under the Judicature Act, R.S.N.B. 1973, c. J-2 for parties who may not have the capacity to sue or to be sued. "Infants have access to the courts through their "next friend", lunatics through their guardians or committees (the Infirm Person Act, R.S.N.B. 1973, c. I-8 provides for a court appointed personal representative), and a pauper upon proof that "he is not worth fifty dollars". Furthermore a married woman has an identity distinct from that of her husband through the Married Woman's Property Act, R.S.N.B. 1973, c. M-4, which did not exist at common law.

#### Article 17

Where there are provisions in New Brunswick statutes which might be considered as interfering with the privacy of a person,

or with his home, there are also provisions for this interference to be conducted according to law. For example, in the Liquor Control Act, R.S.N.B. 1973, c. L-10, s. 164, a constable or inspector must obtain a warrant under that section before he is authorized to search premises where he believes liquor is unlawfully kept.

Under the Mental Health Act, R.S.N.B. 1973, c. M-10, written communications are not to be opened, examined, withheld or delayed. However, intervention can occur in prescribed circumstances. Where the communication would be unreasonably offensive to the addressee, prejudicial to the patient's best interests, or interfere with the patient's treatment or cause unnecessary distress, it may be opened. However, this does not apply to any communication to a solicitor, a member of the review board, a member of the Legislative Assembly, or the Ombudsman. In the same manner the Ombudsman Act states that a letter from a person in custody on a charge or after conviction of any offence is to be delivered unopened.

A person's honour and reputation are protected and a right of action for defamation is established under the Defamation Act, R.S.N.B. 1973, c. D-5. Defamation in the act is defined as libel or slander. Privacy is also protected through the Garnishee Act, R.S.N.B. 1973, c. G-2 in which wages due to a judgment debtor for his personal labour are exempt from garnishment.

The Child Welfare Act, R.S.N.B. 1973, c. C-4, the Health Act, R.S.N.B. 1973, c. H-2, and the Adoption Act, R.S.N.B. 1973, c. A-3, all provide for confidential information that is to be inaccessible to the public.

The Workmen's Compensation Act, R.S.N.B. 1973, c. W-13, contains a provision which allows the Board to investigate a person's private life. If the individual in the opinion of the Board is leading an improper or immoral life, compensation may be withheld or suspended to the individual, and the money paid to other dependents as the Board considers advisable.

Under the Child Welfare Act, a child may be apprehended where his morals may be endangered by the conduct of his parents, where the child is found associating with an unfit person, or where the child conducts himself immorally. This action is for the purpose of provision of welfare and rehabilitation of the child, but its implementation is based on a discretionary determination.

#### Article 18

The right to freedom of thought, conscience and religion is well protected in New Brunswick through the Human Rights Act, R.S.N.B. 1973, c. H-11, and the Lords Day Act, R.S.N.B. 1973, c. L-13. Through the Schools Act, R.S.N.B. 1973, c. S-5, no action shall be taken in respect to the absence of a child from school on a Holy Day of the religious denomination to



which the child or his parents belong. As well protection from interference with a child's religious beliefs is ensured under the Schools Act, in that a teacher cannot compel a student to be present at a daily reading of the Scriptures and offering of the Lord's Prayer against the will of his parents or guardian.

#### Article 19

Few hindrances to the right of freedom of expression are found in New Brunswick legislation. Even the Human Rights Act which prevents publication or display of representations of discrimination is not to restrict or prohibit free expression of opinion on any subject by speech or in writing.

Under the Theatres, Cinematographs and Amusements Act, R.S.N.B. 1973, c. T-5, the Board has the power to permit and prohibit the use of film, performance within a theatre, or amusement within the province. All films intended for exhibition in New Brunswick must be submitted to the New Brunswick Film Classification Board for approval.

#### Article 20

The Human Rights Act, R.S.N.B. 1973, c. H-11 sub-section 6(1) provides that no person shall publish or display discriminatory material (in the form of a notice, sign, symbol, emblem or other representation) by means of any medium.

However, sub-section 6(2) provides that sub-section 6(1) shall not restrict free expression of opinion by speech or in writing.

#### Article 21

There appear to be no laws within the Province of New Brunswick which affect these rights.

#### Article 22

Under the Industrial Relations Act, R.S.N.B. 1973, c. I-4, s. 2(1), every employee has the right to be a member of and participate in a trade union. The Act prevents employers from discriminating against or ceasing to employ persons merely because they are trade union supporters, and it regulates methods by which an employer may attempt to curtail trade union activity. The Act also regulates the way in which trade unionists may coerce employees into forming a trade union.

Under the Public Service Labour Relations Act, R.S.N.B. 1973, c. P-25, every employee may be a member of an employee organization and participate in its activities. The Act was created to provide a system of collective bargaining for government employees.

#### Article 23

The law in New Brunswick is in compliance with Article 23, paragraphs 1, 2, and 3. The Marriage Act, R.S.N.B. 1973,

c. M-3, deals with the procedure of solemnization of marriage within the province, especially with the necessity of full and free consent before entering into the marriage contract. If one of the parties to a marriage is under eighteen years of age, then consent of a father, if living, is required, if not then of a mother or guardian. Where consent is unduly withheld the party may apply to a judge of the supreme court.

The family unit is protected by various pieces of provincial legislation, such as the Deserted Wives and Children Maintenance Act, R.S.N.B. 1973, c. D-8. It is also interesting to note that in New Brunswick there is an Act which provides for the maintenance of parents. Under the Parents' Maintenance Act, R.S.N.B. 1973, c. P-1, a dependent parent, that is a parent who from disease or infirmity is unable to maintain himself, may seek maintenance from his sons and daughters.

With respect to paragraph 4, the Law Reform Division of the Department of Justice is currently undertaking a study on matrimonial property. A new property regime is being considered, based on the concept that marriage is an economic as well as a social partnership in which both parties are equal and have an equal claim to property acquired during the marriage. The proposed scheme, a combined community of property and deferred sharing regime would do away with dower rights and involve changes to maintenance legislation.

#### Article 24

Various statutes provide for protection of children by their families (Deserted Wives and Children Maintenance Act, R.S.N.B. 1973, c. D-8, for example) and by the Province (Child Welfare Act, R.S.N.B. 1973, c. C-4, for example). However, in New Brunswick discrimination still exists regarding children born out of wedlock. In such a case, the family unit itself is not always given the recognition it would have if the parents of the child were married. Children born out of wedlock inherit through a different scheme in the Devolution of Estates Act, R.S.N.B. 1973, c. D-9. As well, all attempts are made in New Brunswick to legitimize children through the Legitimation Act, R.S.N.B. 1973, c. L-4, the Adoption Act, R.S.N.B. 1973, c. A-3 and, the Health Act, R.S.N.B. 1973, c. H-2, and the Marriage Act, R.S.N.B. 1973, c. M-3. It is only a matter of time and legislative reform that will bring about required changes.

Regarding paragraph 2, the Health Act, R.S.N.B. 1973, c. H-2 requires that all births and stillbirths be registered in the province either in the names of the parents, or in the name of the mother if the child was born out of wedlock.

#### Article 25

There are in New Brunswick distinctions in the Elections Act, R.S.N.B. 1973, c. E-3 based on nationality. A person must



be a Canadian citizen or other British subject to vote. As well every person undergoing punishment as an inmate in a penal institution for the commission of any offence is disqualified from voting.

Under the Civil Service Act, R.S.N.B. 1973, c. C-5, an anti-discrimination clause in relation to access to public service is provided in subsection 13(4), stating that the Civil Service Commission, in prescribing selection standards for eligible lists shall not discriminate on the basis of sex, race, national origin, colour or religion. Notably absent from this enumeration are the classifications of age and marital status.

#### Article 26

Comments under other Articles in the Covenant are applicable.

#### Article 27

In New Brunswick under the Official Languages of New Brunswick Act, R.S.N.B. 1973, c. O-1, French and English are established as the official languages of the Province, to have equal status, rights and privileges for all purposes to which the authority of the Legislature of New Brunswick extends.

There are no restrictions in New Brunswick on the right of cultural, religious or linguistic minorities to enjoy and practice their own cultures, religions, or language, provided there is no infringement on the rights and freedoms of others.

5. NEWFOUNDLAND\*

Introduction

The Province of Newfoundland consists of the island of Newfoundland and the territory of Labrador lying on the extreme eastern end of North America. The Province's population of 577,000 is descended almost entirely from settlers from the British Isles who began arriving in the 16th century but most of whom arrived at the turn of the 19th century. Prior to union with Canada in 1949 Newfoundland was an independent Dominion within the British Commonwealth and prior to that there was an extended period of British colonial rule. In view of its history it is not surprising that most of the traditions and institutions of Newfoundland, including the legislative and judicial system, are derived from and fashioned on those of Britain.

Early settlements in the Province were based on the fishery and this is reflected today in the many small fishing communities spread out along the coastline where a significant proportion of the population resides. Except for several instances where towns have grown up around forestry and mining operations the interior of the island and of Labrador are virtually uninhabited. Where regional centers have developed there are towns of 10,000 to

\* Report prepared by the Government of Newfoundland.

30,000 persons and only St. John's the capital city, with a population of less than 150,000 is significantly larger.

The low population density of the Province and the general lack of dividing characteristics among the residents have resulted in few pressures for legislative guarantees in the field of human rights. However, in view of the importance which Newfoundlanders attach to such rights, the legislature of the Province has endeavoured to entrench them in the statutes described below.

## Article 2

Judicial and administrative recourses are available to persons in the Province of Newfoundland.

In terms of the Newfoundland Court system where civil and criminal proceedings are taken, there exists:

(a) The Provincial Court: Its jurisdiction extends to summary conviction and indictable offences (except those indictable offences which must go before a Superior Court of criminal jurisdiction) under The Criminal Code of Canada and under Provincial Statute, and as for civil actions the court will hear those up to \$500, with a few exceptions.

(b) The District Court: Its jurisdiction extends to civil



actions up to an unlimited amount, and to criminal (indictable) offences, where the accused is given a choice as to mode of trial and chooses trial by judge alone, except for those offences such as treason, murder and those others mentioned in Section 427 of The Criminal Code.

(c) The Supreme Court of Newfoundland

(i) Trial Division: Its jurisdiction extends to Divorce and Matrimonial actions, Probate and Guardianship; and civil action not expressly excluded by Statute, with no monetary limit set; Indictable offences under The Criminal Code of Canada tried by Judge and Jury;

(ii) Appeal Division: Its jurisdiction allows the Court to hear and determine motions for new trials, motions in arrest of judgment, rehearings, appeals and special cases, has appellate jurisdiction in all criminal proceedings, civil causes and matters, jurisdiction and power to hear and determine motions and appeals respecting any judgment, order or decision of a judge of the Trial Division.

Also within the Newfoundland Court system there exists:

(d) The Family Court: It deals with all family matters which include juvenile delinquency (17 years of age and under), cases under The Child Welfare Act, The Maintenance

Act, The Adoption Act, The Children of Unmarried Parents Act; also Criminal and Civil actions involving members of the same family (excluding Divorce).

The Newfoundland Human Rights Code R.S.N., 1970 c. 262 as am. by S.N., 1973 No. 34 as am. by 1974 Nos. 57 and 114. This Act attempts to provide fair accommodation practices, fair employment practices and to eliminate discriminatory publications. This Act provides remedies within ss 14-21. A complaint is to be made in writing on the prescribed forms to the Director and the Director or an inspector may inquire into the complaint and endeavour to effect a settlement. If no settlement is forthcoming, the Director shall report to the Minister and make a recommendation as to whether or not the matter should be referred for further inquiry.<sup>1</sup> If the Minister deems it desirable he may refer the matter to the Human Rights Commission or an Ad Hoc Human Rights Commission with a view to settlement of the matter.<sup>2</sup> The powers of the Commission are found in S. 17 of this Act. The Minister may issue whatever order he considers necessary to carry out the recommendation of the Commission.<sup>3</sup> Any person who contravenes or fails to comply with this Act, the regulations or any order under this Act or the regulations is guilty of an offence and liable to summary conviction and in addition may be ordered to pay compensation and to reinstate the employee.<sup>4</sup> Where a person has been convicted

1. SS 15,16

2. S 16A

3. S 21

4. S 23

of any offence under this Act, the Minister may apply to a Judge of the Supreme Court of Newfoundland for an order enjoining the person so convicted from continuing the offence.<sup>5</sup> Any aggrieved person may initiate proceedings or lay a complaint before a court of summary jurisdiction for an alleged contravention of, or failure to comply with, this act.<sup>6</sup>

There are provided within the Human Rights Code appeal procedures when any person is dissatisfied with an Order of the Minister.<sup>7</sup>

Under The Proceedings Against the Crown Act<sup>8</sup> the Crown is subject to all liabilities in tort as an employer, as an owner of the property, as a possible violator of regulations or statutes; as well, the Crown may be vicariously liable for torts of its officers or agents.

Proceedings against the Crown in the Supreme Court of Newfoundland (are brought as a right) and instituted and proceeded with in accordance with The Judicature Act and the Rules of the Supreme Court.<sup>9</sup> Similarly except as provided by the Act, proceedings may be instituted in a district court in accordance with the District Courts Act and the Rules of the District Court.<sup>10</sup>

5. S 25

6. S 26

7. S 22

8. S.N., 1973 No. 59

9. Proceedings Against the Crown Act, S.N., 1973 C.59 S.7

10. Ibid S 8

The rights of the parties are similar as in any suit between persons. The Court may make any order, including any order as to costs that it may make in proceedings between persons, and may otherwise give the relief that the case requires.<sup>11</sup>

The Court shall not grant an injunction or specific performance against the Crown where such relief is sought, however it may make an order declaratory of the rights of the parties.<sup>12</sup> The same is true where a party is claiming recovery of real or personal property from the Crown.<sup>13</sup>

The Provincial Crown is vicariously liable for torts of its officers and agents. However, no proceedings shall be brought against the Crown for vicarious liability in respect of any act or omission of an officer or agent of the Crown unless the act or omission would have given rise to a cause of action in tort against that officer or agent or his personal representative.<sup>15</sup>

It is also noted that a Minister or senior officer or corporation that is an agent of the Crown and who employs an employee will not be sued for torts of the subordinate in the absence of a statute imposing such liability to such suit.<sup>16</sup>

11. Ibid S 16(a) (b)

12. Ibid S 17(1)

13. Ibid S 18

14. Ibid S 5(1) (a)

15. Ibid S 5(2)

16. Québec Liquor Comm v. Moore (1924 S.C.R. 540 at 551 per Duff, J. Also Washer v B.C. Toll Highways and Bridge Authority (1965) 53 W.W.R. 225 (B.C.C.A.)



The Minister, senior officer or corporation is liable for such a tort if he or it has ordered it to be committed or personally engaged in it.<sup>17</sup>

The Parliamentary Commissioner (Ombudsman) Act, R.S.N., 1970 C. 285 as amended by S.N., 1975 No. 32 (in force June 16, 1975).

The principal duty and function of the Commissioner shall be to investigate any decision or recommendation made including any recommendation made to a Minister, or any act done or omitted, relating to a matter of administration and affecting any person or body of persons in his or its personal capacity, in or by any Department or agency, or by any officer, employee or member thereof in the exercise of any power or function conferred on him by any enactment.<sup>18</sup>

The Commissioner may make any investigation as stated in S. 14 (1) either on complaint made to him by any person or on his own motion, and he may commence an investigation notwithstanding that the complaint may not on its face be against a decision, recommendation, act or omission as mentioned in Section 14 Subsection (1).<sup>19</sup>

17. Conseil des Ports Nationaux v. Longelier (1969) S.C.R.

18. The Parliamentary Commissioner (Ombudsman Act) R.S.N. 1970 c. 285 as amended by S.N., 1975 No. 32 S. 14 (1)

19. Ibid S. 14 (2)

The provisions of this Act are in addition to the provisions of any other Act or any rule of law under which

(a) any remedy or right of appeal or objection is provided for any person, or

(b) any procedure is provided for the inquiry into or investigation of any matter,

and nothing in this Act limits or affects any such remedy or right of appeal or objection or procedure.<sup>20</sup>

The Legal Aid Act, S.N., 1975 No. 42 (Assented to June 25, 1975) in force January 16, 1978.

Legal Aid may be granted to a person in respect of any proceeding or proposed proceeding

(a) in the Supreme Court

(b) in a District Court

(c) in a Family Court

(d) in the Provincial Court

(e) where the applicant is charged with an indictable offence or where an application is made for a sentence of preventive detention under Part XXI of The Criminal Code (Canada)

(f) under The Extradition Act (Canada) or The Fugitive Offenders Act (Canada); or

(g) in the Federal Court of Canada.<sup>21</sup>

20. Ibid S. 32

21. The Legal Aid Act, S.N., 1974 No. 42 S. 48

The director may grant legal aid to a person otherwise entitled thereto in any summary conviction proceeding under an Act of the Parliament of Canada or of the Legislature if upon conviction there is a likelihood of imprisonment or loss of means of earning a livelihood.<sup>22</sup> Also on approval of the provincial director, legal aid may be authorized to assist a person otherwise entitled

(a) in an appeal

- (i) to the Supreme Court of Canada
- (ii) to the Federal Court of Canada
- (iii) to the Supreme Court
- (iv) to a judge sitting in court or chambers, or
- (v) under Part XXIV of the Criminal Code or The Summary Jurisdiction Act, or

(b) in a proceeding by way of mandamus, quo warranto, certiorari, motion to quash, habeas corpus or prohibition.<sup>23</sup> Section 54 of the Act confers upon any applicant the right to appeal from any decision refusing, suspending or withdrawing legal aid.

The availability of prerogative writs to review judicial or quasi-judicial decisions of various boards and tribunals on questions of natural justice or excess of jurisdiction is governed by the common law.

The Summary Jurisdiction Act<sup>24</sup> which relates to the powers

22. Ibid S. 49

23. Ibid S. 53

24. R.S.N., 1970 c. 364 as amended by 1971 Nos 14-23 as amended by 1972 Nos 11 and 15 and 48 as amended by 1974 Nos. 57 and 63 and 77 and 88.

and procedure of Provincial Court judges outlines the remedies for summary proceedings.

### Article 3

The Newfoundland Human Rights Code<sup>1</sup> and the Courts as mentioned earlier under Article 2 provide protection and ensure equality of rights of both men and women in public accommodation services or facilities, in employment, or in the media.

Women's property rights are provided for under The Married Women's Property Act<sup>2</sup>. This Act renders an instrument void which imposes restrictions upon the anticipation or alienation which could not have been attached to the enjoyment of that property by a man.<sup>3</sup> Section 3 of the Act states that property acquired by a married woman belongs to her as if she were a femme sole.<sup>4</sup>

The Newfoundland Human Rights Code states that no employer, and no person acting on his behalf, shall establish or maintain differences in wages between male and female employees, employed in the same establishment, who are performing under the same or similar working conditions the same or similar work on jobs re-

1. R.S.N., 1970 c. 262 as amended by S.N. 1973 No. 34 (Schedule B) S.N. 1974 No. 114 SS 7, 8, 9, 10, 11
2. R.S.N., 1970 c. 227 as amended by S.N., 1974 No. 57
3. Ibid S. 3(3)
4. Ibid S. 3(1)



quiring the same or similar skill, effort and responsibility, except where such payment is made pursuant to a seniority system or a merit system.<sup>5</sup>

Also a female employee who is performing the same or similar work, shall have the opportunities for training and advancement and pension rights and insurance benefits equal to those applicable to a male.<sup>6</sup>

#### Article 4

The Emergency Measures Act<sup>1</sup> does not abrogate the provisions found in Article 4 of the Covenant. The orders and regulations made under the Act are applicable only during the time of a public emergency.

Thus it is only in times of public emergency (civil disasters, war time) where the life of the nation is threatened that measures may be taken which may derogate the obligation under the Articles of this Covenant.

#### Article 5

This is a general provision which states that the Covenant

5. Supra N. 1 S. 10 (1)

6. Ibid S. 10 (2)

1. R.S.N., 1970 c. 108 as amended 1971 No. 14, 1973 No. 48  
1974 No. 117.

does not give either explicitly or implicitly a right to the state, group or persons to perform any act aimed at the destruction of any of the rights recognized within the Covenant.

Also fundamental human rights which are recognized as already existing will continue to be recognized notwithstanding they may not be mentioned in the present Covenant.

#### Article 6

The provisions of Article 6 allow for the protection of a person's right to life. The death penalty if it is in effect in any country is to be imposed for only very serious crimes and certain restrictions are to be employed on the state when anyone is sentenced to death - such as the right to seek pardon of the sentence. Nor should any person below eighteen years of age nor should a pregnant woman be sentenced to death.

A person may bring a civil action in damages for assault and battery when there is an intentional harm done to this person and if it is unintentional his remedy may be in negligence.

The Fatal Accidents Act<sup>1</sup> allows an action to be maintained by the immediate family of the deceased when the person causing death has done so through neglect.<sup>2</sup>

1. R.S.N., 1970 c. 126 as amended by S.N., 1971 No. 9 and 14

2. Ibid SS 2, 3

The Employers' Liability Act<sup>3</sup> protects the employee when injury is a result of the negligence of the employer either directly or indirectly.<sup>4</sup> Also the workman has the right to hold his employer vicariously liable for the fault of a sub-contractor.<sup>5</sup>

Where a person is partially at fault through his own negligence he may bring an action against those that contributed to the injury and liability will be proportioned to the degree of fault.<sup>6</sup>

The Emergency Medical Aid Act<sup>7</sup> allows a physician, or registered nurse, to perform medical service in an emergency and they shall not be liable for damages for injuries to or the death of a person unless it is established there was gross negligence in administering these medical services.<sup>8</sup>

If there has occurred a violation of the right to life as a result of criminal activity and for some reason redress against the offender is not possible then compensation may be sought under The Criminal Injuries Compensation Act<sup>9</sup>.

Compensation is available as a result of the following enumerated offences:

3. R.S.N., 1970 c. 110

4. Ibid S. 3

5. Ibid S. 7

6. The Contributory Negligence Act, R.S.N., 1970 c. 61

7. S.N., 1971 No. 15

8. Ibid S. 3

9. R.S.N. 1970 c. 68 as amended by S.N. 1971 No. 17 S.N. 1973 Nos. 94 and 95, 1974 No. 57

1. Breach of duty to take reasonable care of explosive substance,
2. Intentionally causing injury with explosive substance.
3. Rape or attempted rape,
4. Causing bodily harm to apprentice or servant,
5. Criminal negligence,
6. Causing bodily harm by criminal negligence,
7. Murder,
8. Manslaughter,
9. Attempted murder,
10. Causing bodily harm with intent,
11. Administering a noxious thing,
12. Overcoming resistance to commission of offence,
13. Setting traps,
14. Interfering with transportation facilities,
15. Criminal negligence in operation of motor vehicle;  
dangerous driving,
16. Impaired driving,
17. Dangerous operation of vessel, etc.
18. Assault, attempted assault,
19. Assault with intent
20. Kidnapping,
21. Performing abortion,
22. Robbery,
23. Intimidation by violence or threats



24. Taking part in a riot,
25. Hijacking of aircraft
26. Common nuisance causing harm,
27. Abandoning child,
28. Administering poison
29. Arson

Also compensation may be available where injury occurs on arresting or attempting to arrest a person who committed or was committing or who was suspected of committing or having committed a criminal offence; or where a person was injured while rendering assistance to any peace officer.<sup>10</sup>

The Disabled Persons Act<sup>11</sup> allows for a disabled person to apply to the Board for an allowance. There is also incorporated within the Statutes of Newfoundland The Workman's Compensation Act<sup>12</sup> which ensures a workman is compensated when injured. The Social Assistance Act<sup>13</sup> provides for assistance out of funds to adults or families who through mental and physical incapacity are unable to provide in whole or in part by their own efforts necessities essential to maintain or assist in maintaining a reasonable normal and healthy existence. Social assistance may also be granted to mothers, husbands and children where their means of livelihood are not adequate.

10. Ibid S. 13

11. R.S.N. 1970, c. 97 as amended by 1973 No. 31

12. R.S.N. 1970 c. 403 as am. by 1971, No. 79, 1972 Nos. 54, 11 1973 No. 115, 1974 Nos. 57, 72 1976-76 Nos. 42, 43

13. R.S.N. 1970 c. 353 as am. by 1971 No. 14, 1972 Nos. 34, 35 1973 No. 69, 1974 No. 116.

Article 7

No one shall be subject to torture or cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subject without his free consent to medical or scientific experimentation.

The Health and Public Welfare Act<sup>1</sup> provides protection to people in the area of Public Health. This Act as well as The Mental Health Act<sup>2</sup> provides protection of people's rights.

The Adult Corrections Act<sup>3</sup> repealed The Corrections Act<sup>4</sup> and among other things its purpose is:

"to encourage, supervise, treat and train adult prisoners serving sentences of imprisonment within correctional institutions with a view to the ultimate rehabilitation to society."

The Prisons Act<sup>5</sup> provides that the Lieutenant-Governor in Council may make regulations for such items as:

- the orderly, disciplined, sober, honest, impartial, loyal, efficient, speedy, conscientious, obedient, secure, courteous and just performance of duties by the staff

1. R.S.N., 1970 c. 151, as am. by 1971 No. 18, 1973 Nos. 31, 45, 91 1974 No. 57
2. S.N., 1971 No. 80 as am. by S.N., 1973 No. 93, 1974 No. 57
3. S.N., 1975 No. 12
4. R.S.N., 1970 c. 67
5. R.S.N., 1970 c. 305 as am. by 1972 No. 30, 52

- providing for the medical and dental needs of the prisoners
- providing for the health and the prevention of disease, for the destruction and replacement, at the expense of the Province, of prisoners' clothing.<sup>6</sup>

Also a barrister or solicitor may, subject to the regulations, make professional visits to any prisoner at all reasonable times.<sup>7</sup>

Under the provisions in The Human Tissue Act<sup>8</sup> a person may direct that his body may be used for therapeutic purposes, or for purposes of medical education, or for purposes of medical research, after his death.

#### Article 8

As a general proposition the statutes do not compel people to perform forced or compulsory labour. Unless it is required in an emergency situation such as provided in The Forest Fire Act.<sup>1</sup>

Section 10 states:

"When any woods or barrens are on fire it shall be the duty of the Chief Fire Warden, fire wardens, magistrates, justices of the peace, constables, and rangers...to order

6. Ibid S. 10(1)

7. Ibid SA 12(2)

8. R.S.N., 1970 c. 162 as am. by 1971 NOs. 14, 16

1. R.S.N., 1970 c. 141 as am. by 1973 NOs. 22, 37, 1975 No. 61 S.10

so many men between the ages of eighteen and fifty...as they deem necessary to repair to the place....and without fee or reward...to assist...and any such person...who refuses or neglects to obey such order shall be liable to a penalty...".

This Act does not, however, take precedence over The Emergency Measures Act<sup>2</sup> whereby the Minister is authorized to employ or conscript any person during the time of a civil disaster.

In The Summary Jurisdiction Act<sup>3</sup> Section 123 states:

"In all sentences of imprisonment under the summary convictions before a Magistrate, justice or justices such sentence of imprisonment may be with hard labour during the term of imprisonment in the discretion of such convicting magistrate...".

Article 9; Article 14

There is no provincial legislation dealing directly with issues raised in these articles although many of the issues are covered indirectly in a number of Acts.

The Summary Jurisdiction Act<sup>1</sup> provides that the provisions

2. R.S.N., 1970 c. 109 as am. by 1971 No. 14, 1973 No. 48, 1974 No. 1
3. R.S.N., 1970 c. 364 as am. by 1972 Nos. 11, 15, 1974 Nos. 57, 63 77, 1975-76 No. 7, 8
1. R.S.N. 1970, c. 364, as am. S.N. 1972, No. 11 & 15, S.N. 1973, No. 88, S.N. 1974, Nos. 57, 63 & 77, S.N. 1975 No's 8 & 26 S.N. 1975-76, No. 7.



of the Criminal Code,<sup>2</sup> as amended from time to time respecting indictable offences and the procedure relating thereto shall apply to every case in which a person commits or is suspected of having committed an indictable offence over which the Legislature of the Province has legislative authority.

Arrest and detention in civil matters is governed by the Judicature Act.<sup>3</sup> A person so arrested may apply for bail and the plaintiff must proceed to trial within four weeks or the judge may cause the defendant to be released and the bail bond cancelled.

Provision for the right to a fair and public hearing for the determination of any criminal charge, or of his rights and obligations in a suit at law are provided for by the combined operation of The Family Courts Act,<sup>4</sup> The Summary Jurisdiction Act,<sup>5</sup> the District Courts Act<sup>6</sup> and the Judicature Act<sup>7</sup> along with the Respective Rules of Court.

#### Article 10

The treatment of arrested or accused persons in criminal

2. R.S.N. 1970, Ch. C-34 as amended.

3. R.S.N. 1970, c. 187, as am. S.N. 1971 No's 14, 35 & 76, S.N. 1973, No. 121, S.N. 1974, No's 57, 58 & 76, S.N. 1975, No. 11, S.N. 1975-76, No's 41, 57 & 73, S.N. 1977, C. 79.

4. R.S.N. 1970, C. 122 as am. S.N. 1973, No's 3 & 31.

5. Supra.

6. S.N. 1975-76, No. 69, S.N. 1977, C. 45.

7. Supra.

matters is covered by the provisions of the Criminal Code<sup>1</sup> as provided for by the Summary Jurisdiction Act.<sup>2</sup>

The Act<sup>3</sup> provides for the release of an accused person on bail. The Act provides that there shall be no arrests in a civil action except as provided by the Act. Arrest warrants may be issued where a Judge is satisfied that a person is attempting to leave the jurisdiction or to dispose of property in a manner prejudicial to an action.

The treatment of juvenile persons is covered by the Welfare of Children Act<sup>4</sup> which specifically provides that juvenile persons shall be kept separate from adult prisoners prior to and subsequent to conviction.

#### Article 11

The Summary Jurisdiction Act<sup>1</sup> provides that no person shall be imprisoned merely for inability to fulfill a contractual obligation. However the Act does provide for imprisonment up to six weeks for refusal to pay when it is proven that the person has the means to pay.

1. R.S.N. 1970, Ch. C-34 as amended.
2. R.S.N. 1970, c. 364, as amended S.N. 1972, No's 11 & 15, S.N. 1973, No. 88, S.N. 1974, No's 57, 63 & 77, S.N. 1975, No's 8 & 26, S.N. 1975-76 No. 7.
3. Ibid.
4. R.S.N. 1970 C 190, as amended by S.N. 1973, No. 48, S.N. 1975, No. 10.
1. R.S.N. 1970, C. 364, as amended by S.N. 1972, No's 11 & 15. S.N. 1973, No. 88, S.N. 1974, No's 57, 63 & 77, S.N. 1975, No's 8 & 26, S.N. 1975 - 76, No. 7.

Under the Judicature Act<sup>2</sup> the Court or a Judge may, without warrant, order and direct such person to be brought before it or him and may commit to prison, admit to bail, remand, or otherwise deal with such person.

Article 12

The main restriction on movement in Newfoundland is during a forest fire or some other natural emergency. Under The Forest Fires Act<sup>1a</sup> the movement of persons may be regulated in or out of the part of the Province in which a forest fire is in progress. Another piece of legislation, The Forest Travel Act,<sup>2a</sup> may be used to control movement in certain restricted areas of forest land. Under this Act the Minister may order that certain forest lands are to be restricted, and travel in such areas may be prohibited.

The Emergency Measures Act<sup>3</sup> deals with "civil disaster" and is more comprehensive than The Forest Fires Act, or The Forest Travel Act. Under this Act the movement of people can be restricted and controlled in times of real or anticipated occurrence other than a war emergency.

2. R.S.N. 1970, C. 187, as amended by S.N. 1971, No's 14, 35 & 76, S.N. 1973, No. 121, S.N. 1974, No's 57, 58 & 76, S.N. 1975, No. 11, S.N. 1975-76, No's 41, 57 & 73, S.N. 1977, C. 79.

1a R.S.N. 1970, C. 141 as amended by S.N. 1973, No's 22 & 37, S.N. 1975-76, No. 61.

2a R.S.N. 1970, C. 142 as amended by S.N. 1973, No. 37.

3. R.S.N. 1970, C. 108 as amended by S.N. 1971, No. 14, S.N. 1973 No. 48, S.N. 1974, No. 117.

The only restriction on residence would be physical factors such as the availability of accommodation or limitation on building construction which prevail in any particular area of the Province.

### Article 13

Expulsion of aliens from the territory of Canada is a matter which falls within the jurisdiction of the federal Government. Therefore, there is no provincial legislation on this matter.

### Article 15

Provincial law regarding the retroactivity of statutes is found in the Interpretation Act.<sup>1</sup> When an Act is repealed in whole or in part, the repeal or revocation shall not affect any right, privilege, obligation or liability acquired, accrued, accruing or incurred under the Act repealed or revoked.

When an Act is repealed in whole or in part and other Acts substituted therefore, any proceeding taken under the Act, repealed or revoked, shall be taken up and continued under and in conformity with the provisions substituted, as far as it consistently may be.

1. R.S.N. 1970, C. 182 as amended by S.N. 1974, No's 38 & 77  
S.N. 1975-76, No. 57, S.N. 1977, c. 46.



In the recovery or enforcement of penalties or the enforcement of rights under the Act repealed or revoked the procedure established by the substituted provisions shall be followed so far as it can be adapted.

If any penalty or punishment is reduced or mitigated by any of the provisions substituted, the penalty or punishment, if imposed or adjudged after the repeal or revocation, shall be reduced or mitigated accordingly.

There are no provisions for persons already convicted under an Act to benefit from any repeal or substitution.

#### Article 16

There is no specific legislation dealing with the rights to recognition as a person before the law. Non-residents who otherwise qualify for compensation under the Criminal Injuries Compensation Act<sup>1</sup> are not to be refused on the ground that they were not ordinarily resident of the Province. However, under the Rules of Procedure of the Supreme Court of Newfoundland, a non-resident may be ordered to post security for costs of an action.

1. R.S.N. 1970 c. 68 as amended by S.N., 1971 Nos. 14 & 17.  
S.N. 1973 Nos. 94 and 95, S.N., 1974 No. 57

Article 17

Newfoundland has no legislation dealing specifically with the right to privacy. However the subject is dealt with in several Acts. Any person employed in the administration of Legal Aid is, under the Legal Aid Act<sup>1</sup>, obligated to preserve secrecy with respect to all matters coming to his knowledge in the course of his employment.

Similarly, under the Parliamentary Commissioner (Ombudsman) Act<sup>2</sup> as amended, every investigation by the Ombudsman under the Act<sup>3</sup> is to be in private with all persons having the same privileges in relation to the giving of information, the answering of questions, or the production of documents as witnesses have in any court.

The Criminal Injuries Compensation Act,<sup>4</sup> as amended provides that a victim-applicant before the Crimes Compensation Board is entitled to an in camera hearing where it is in his or her interest with regard to an alleged sexual offence.

Prospective adoptive parents refused consent to adopt by the Director of Child Welfare are entitled to an in camera

1. S.N. 1975, No. 42
2. R.S.N. 1970, c. 285 as amended by S.N. 1974, No. 57, S.N. 1975, No. 32
3. Ibid.
4. R.S.N. 1970, c. 68 as amended by S.N. 1971, No's 14 & 17, S.N. 1973, No's. 94 and 95, S.N. 1974 No. 57.

appeal before the Adoption Appeal Board, under the Adoption of Children Act.<sup>5</sup>

The Evidence Act,<sup>6</sup> as amended, provides that communications between spouses made during the course of marriage or to a clergyman in his professional capacity are privileged and need not be divulged in court.

Regulations may be made under the Mental Health Act,<sup>7</sup> as amended, imposing conditions under which correspondence may be opened and examined prior to delivery, and prescribing the circumstances in which communications may be withheld in a patient's interest. On the other hand, any letter directed to the Review Board is not to be obstructed on pain of prosecution.

Spoken or written words attaching personal honour and reputation are actionable where they impute adultery, unchastity or "other like immorality" and the plaintiff need not prove special damage. This is provided by the Slander Act.<sup>8</sup> A person suffering an attack on his racial, religious, or ethnic honour in the media, may proceed directly in the courts under the Newfoundland Human Rights Code.<sup>9</sup>

5. S.N. 1972, No. 36 as amended by S.N. 1973 No's. 31 & 50  
S.N. 1974, No's 9, 57 & 101, S.N. 1977, C. 63.
6. R.S.N. 1970, C. 115 as amended by S.N. 1971 No's 14 & 48  
S.N. 1972, No's 3 and 11, S.N. 1975-76 No. 26.
7. S.N. 1971, No. 80 as amended 1974 No. 57.
8. R.S.N. 1970 C. 352
9. R.S.N. 1970, C. 262 as amended by S.N. 1973 no. 34, S.N. 1974  
No's 57 and 114.

Article 18

Everyone should be free to worship as he so wishes, and should only be restricted by law in the sense that such limitations are necessary to protect the public.

The Newfoundland Human Rights Code<sup>1</sup> allows for relief where there is discrimination on the basis of religion or religious creed in public accommodation, services or facilities, in employment, or in the media.

With respect to employment practice provisions, an exemption is provided for an employer which is an exclusively religious or fraternal organization that is not operated for private profit and in respect of employment of a domestic employed and living in a single family home. Any limitation, specification or preference based on a bona fide occupational qualification is not considered discrimination within the meaning of the Code.

No trade union shall exclude any person from full membership or expel or suspend or otherwise discriminate against any of its members or discriminate against any person in regard to his employment by any employer because of religion or religious creed.<sup>3</sup>

1. R.S.N., 1970 c. 262, as am. by S.N., 1973 No. 34, S.N., 1974 No.
2. Ibid. S. 9 (6)
3. Ibid S. 9 (3)



Also no person, directly or indirectly, alone or with another by himself or by the interposition of another, shall:

(a) deny to any person or class of persons occupancy of any commercial unit or any self-contained dwelling unit, or

(b) discriminate against any person or class of persons with respect to any term or condition of occupancy of any commercial unit or any self-contained dwelling unit by reason of their religion or religious creed.<sup>4</sup>

Also no person shall publish or display or cause to be published or displayed on lands or premises or in a newspaper, through radio or television or any medium, any notice, sign, symbol, emblem or other representation indicating discrimination or intention to discriminate against any person or class of persons because of their religion or religious creed.<sup>5</sup>

The School Act<sup>6</sup> states that no School Board shall refuse admission to any school under its control to any child solely on the ground that the child is of a religious faith which is not the denomination or one of the denominations of the school if there is no school of his own religious persuasion reasonably available to him.

4. Ibid. S. 8

5. Ibid S. 11

6. R.S.N. 1970 c. 364, as am. by S.N. 1973 No. 35, S.N., 1974 No. 28 S.N., 1975 No. 20, S. 63

Also a person who objects to swearing on oath on the basis of religion or lack of it may solemnly affirm before any court or tribunal or when taking oath of government office under The Oaths Act<sup>7</sup> and The Oaths of Office Act<sup>8</sup>, respectively.

#### Article 19

The House of Assembly Act<sup>1</sup> provides that members of the House of Assembly, which is the legislative body of the Province, cannot be held liable to any civil action or prosecution, arrest, imprisonment or damages, by reason of any matter or thing brought by them by petition, bill, resolution, motion, or otherwise or said by them, before the House.

Under the Censoring of Moving Pictures Act<sup>2</sup> provision is made for the appointment of a Board Censors who may prohibit the showing of any pictures or films which they consider injurious to the morals of the public or against the public welfare or offensive to the public. No Board has ever been appointed under the Act.

7. R.S.N., 1970 c. 277

8. R.S.N. 1970 c. 278

1. R.S.N. 1970, c. 159, as amended by S.N. 1974, No. 112

2. R.S.N. 1970, c. 30.

The right to freedom of political opinion is protected by The Newfoundland Human Rights Code<sup>3</sup> by prohibiting discrimination on that basis in public accommodation, services and facilities, in employment and in the communications media. The Code also provides that no person shall publish, display or broadcast any notice, sign or representation indicating discrimination or an intention to discriminate against any person or class of persons for any purpose because of race, religion, religious creed, sex, marital status, political opinion, colour or ethnic, national, or social origin.

Article 20

The Newfoundland Human Rights Code<sup>1</sup> provides that no person shall publish, display or broadcast or cause or permit to be published, displayed or broadcasted any notice or representation indicating discrimination or an intention to discriminate against any person or any class of persons for any purpose because of race, religion, religious creed, sex, marital status, political opinion, colour or ethnic, national or social origin.

3. R.S.N. 1970, c. 262 as amended by S.N. 1974, No. 34;  
S.N. 1974, No. Is 57, 114.

1. R.S.N. 1970, c. 262 as amended by S.N. 1974, No. 34;  
S.N. 1974, No's 57, 114.

Article 21

The Public Processions Act<sup>1</sup> empowers the Lieutenant-Governor to issue a proclamation prohibiting any public procession which is likely to result in a breach of the peace. Anyone who participates in a prohibited procession is liable to a penalty not exceeding fifty dollars, or imprisonment for a period not exceeding ten days.

Under The Communicable Diseases Act<sup>2</sup> the Minister of Health may prohibit any public gathering where necessary to prevent the spread of communicable disease.

Article 22

Under the Labour Relations Act, 1977<sup>1(a)</sup> every employee, with the exception of those in managerial capacities, is given the right to be a member of a trade union and to participate in its activities. Every employer has the right to be a member of an employer's association and to participate in its activities. Employers are prohibited from interfering with the selection, formation or administration of a trade union or from discriminating against any person in regard to employment

1. R.S.N. 1970, C. 317

2. R.S.N. 1970, C. 52 as amended by S.N. 1974, No. 25

1(a) S.N. 1977, C.64



because that person is a member of a trade union. Employers are also prohibited from using intimidation, threat of dismissal or any kind of threat, or the imposition of a pecuniary or other penalty or any other means to compel a person to refrain from becoming or to cease to become a member, officer or representative of a trade union. No person, whether or not he is an employer, is permitted to seek by intimidation or coercion to compel an employee to become or refrain from becoming or cease to be a member of a trade union. However, membership in a trade union may be made a condition of employment.

Every trade union acting as a bargaining agent is required to make membership in that union available to all employees in the unit the union represents. The union may prescribe certain qualifications for membership provided they are reasonable and non-discriminatory. Where it is determined that an employee has been unfairly denied admission to or expelled from a trade union the Labour Relations Board may order him admitted to or reinstated in the union.

The Fishing Industry (Collective Bargaining) Act, 1971<sup>2</sup> provides that every fisherman has the right to be a member of a collective bargaining association and that every purchaser of fish for processing has the right to be a member of an Operator's organization and to participate in the activities

2. S.N. 1971, No. 53 as amended by S.N. 1973, No's 34, 197; S.N. 1975, No. 76; S.N. 1977 C. 64.

thereof. The Act has provisions similar to the above provisions of The Labour Relations Act, 1977.

The Public Service (Collective Bargaining) Act, 1973<sup>3</sup> gives employees of the Province and of Provincial Crown corporations and agencies similar rights. Teachers may associate pursuant to the terms of the Newfoundland Teacher (Collective Bargaining) Act, 1973<sup>4</sup>.

The formation of certain other types of associations is regulated through statutes establishing registration and incorporation systems.

For example, any nine or more persons desirous of being formed into an agricultural society may make application in writing to the Minister of Forestry and Agriculture for registration. A society thus formed may also be wound up by order of the Minister.<sup>5</sup> Similarly, any five persons of full legal capacity residing in the Province may make application for registration as a cooperative society.<sup>6</sup> The Companies

3. S.N. 1973, No. 123 as amended by S.N. 1974, No. 37; S.N. 1977, C. 64.

4. S.N. 1973, No. 114 as amended by S.N. 1975, No. 44; S.N. 1977, C. 64.

5. The Agricultural Societies Act, R.S.N. 1970, C.7 as amended by 1973, no. 37.

6. The Co-operative Societies Act, R.S.N. 1970, C. 65; as amended by S.N. 1971, No. 61; S.N. 1973, No's 23, 39; S.N. 1974, No. 1; S.N. 1975-76, No. 71.

Act<sup>7</sup> provides for the incorporation and registration of companies to carry on business in the Province.

Article 23

Under The Family Courts Act,<sup>1</sup> it is the duty of every Judge of the Family Court, which has jurisdiction in all cases involving offences relating to family life, to strive for the protection of children and for good relations between consorts. In this regard it is the duty of every judge to advise all persons who seek his good offices for the rehabilitation of juvenile delinquents, and for the protection of children who are particularly exposed to moreal and physical dangers on account of their surroundings or other special circumstances, and who in general collaborate in the improvement of the lot of unhappy and neglected children. Every judge is also required to act as moderator, when so requested, in any dispute between consorts or between parents and children.

The Solemnization of Marriage Act, 1974<sup>2</sup> provides that persons may be married by religious or civil authorities pro-

7. R.S.N. 1970, C. 54, as amended by S.N. 1971, No. 16; S.N. 1972, No. 5; S.N. 1973, No. 6; S.N. 1974, No. 30; S.N. 1975, No. 14.
1. R.S.N. 1970, C. 122, as amended by S.N. 1973 No's 3, 31.
2. S.N. 1974, No. 81, as amended by S.N. 1975, No. 5; S.N. 1975-76, No. 48; S.N. 1977, c. 66.

vided certain formalities are complied with and the persons meet certain basic requirements. Generally the solemnization of marriage requires the issuance of a licence which requires the payment of a small fee and the filing of an affidavit setting out certain basic information concerning the parties to the intended marriage. Except in cases involving pregnancy no marriage under the age of sixteen years is permitted. Generally where either party to an intended marriage is under the age of nineteen years parental consent is required but an order dispensing with such consent may be obtained.

The Maintenance Act<sup>3</sup> provides for the maintenance of parents, spouses and children. Every son and daughter of sufficient means is liable for the support of his or her dependent parent and every parent is liable for the support of his or her child. Unless other suitable provisions have been made by mutual agreement or proceedings are barred by reason of adultery, one spouse is liable for the maintenance of the other. A dependent parent, a child or a deserted spouse may, by complaint, initiate an action for an order of maintenance and in the case of a husband or wife, for an order requiring the other spouse to stay away and/or to stop

3. R.S.N. 1970, C. 223, as amended by S.N. 1973, No. 119; S.N. 1974, no. 57.



dissipating property. The Act provides for equality of rights and responsibilities of spouses to the marriage.

Article 24

The Child Welfare Act, 1972<sup>1</sup> provides for the appointment of officials charged with the duty of protecting the welfare of children. Once it is determined that a child has been neglected or is mentally defective, persons authorized by the Act may intervene to make such provisions for custody and maintenance as are in the best interests of the child including providing any necessary medical attention.

In addition the Act prohibits persons from employing children in situations detrimental or likely to be detrimental to their health and development. Every person having information of the abandonment, desertion, physical ill-treatment or need for protection of a child is required to report the information to the appropriate authorities. In any proceedings brought under the Act the welfare of the child must be the first and paramount consideration.

Under provisions of the Registration (Vital Statistics) Act<sup>2</sup> any birth which takes place in the province must be re-

1. S.N. 1972, No. 37; as amended by S.N. 1973, No. 31; S.N. 1974, No's 34, 100.
2. R.S.N. 1970, c. 329, as amended by S.N. 1973 No. 39; S.N. 1977, C. 46.

ported to the proper authorities within forty-eight hours for purposes of registration.

Article 25

The House of Assembly Act<sup>1</sup> provides for division of the Province into electoral districts and for the election from those districts of representatives to the House of Assembly, which is the legislative body of the Province. Members, who are elected for a maximum term of five years, cannot be held liable to any civil action or prosecution, arrest, imprisonment or damages, by reason of any matter or thing brought by them by petition, bill, resolution, motion, or otherwise or said by them, before the House of Assembly.

The procedure for voting in provincial elections is prescribed by The Election Act<sup>2</sup>. Subject to some limited exceptions every man and woman ordinarily resident in the electoral district is qualified to vote in an election provided he or she is eighteen years of age or older and is a Canadian citizen or other British subject. Special provisions are made to facilitate the right to vote for students, temporary workers, patients in a sanatorium or home for the aged, blind

1. R.S.N. 1970, C. 159, as amended by S.N. 1974, No. 112.
2. R.S.N. 1970, C. 106, as amended by S.N. 1971, No's 14, 69; S.N. 1972, No. 11; S.N. 1973, No's 41, 48; S.N. 1974, No's 57, 80.

persons, and those unable to read or who are otherwise physically disabled. Employees are permitted three consecutive hours to vote without any loss of income or other form of penalty.

Under The Elections Act a voter in casting his ballot is screened from observation so as to be able to mark his ballot without interference or interruption. The Act prohibits interference with secrecy through attempts to obtain or communicate information concerning the ballot, or intimidation by arms or public address systems. Alcohol, bribery, duress, fraud or connivance which impedes the free exercise of the franchise are deemed to be corrupt practices and offences under the Act.

Subject to some limited exceptions every person age 18 years or older and who is a Canadian citizen or other British subject and ordinarily resident in the Province is qualified to be nominated as a candidate by two or more voters in the electoral district.

The Community Councils Act<sup>3</sup> provides for the organization of communities with the formation of community councils at the

3. S.N. 1972, No. 31, as amended by S.N. 1972, No. 11; S.N. 1974, No. 44; S.N. 1975, No. 72; S.N. 1975-76, No. 32.

request of residents of an area and for the election of councillors by those residents. With certain limited exceptions all residents who are British subjects aged 18 years or older are qualified voters and candidates for councillors.

The Local Government Act<sup>4</sup> contains similar provisions for the establishment and administration of municipalities with The Local Government (Elections) Act<sup>5</sup> providing the procedure for the election of councillors. With certain limited exceptions all residents who are British subjects aged 18 years or older are qualified voters and qualified to be nominated as a candidate for councillor.

Access to the public service is governed by the provisions of The Civil Service Act<sup>6</sup> and The Newfoundland Public Service Commission Act.<sup>7</sup> With limited exceptions, all appointments and promotions to positions within the public service are made on the recommendation of a Commission consisting of three members appointed by the Lieutenant-Governor in Council. All appointments to positions in the public service are made from within the public service except where it would not be in the public

4. S.N. 1972, No. 32, as amended by S.N. 1973, No's 28, 100; S.N. 1974, No. 56; S.N. 1975, No. 54; S.N. 1975-76, No. 67.

5. R.S.N. 1970, C. 217, as amended by S.N. 1971, No's 14, 57; S.N. 1973, No. 66; S.N. 1974, No. 57; S.N. 1975-76, No. 31; S.N. 1977, C. 93.

6. R.S.N. 1970, C. 41 as amended by S.N. 1972, No. 21; S.N. 1974, No's 53, 57; S.N. 1975, No. 29.

7. S.N. 1973, No. 116.



interest. Merit which is the basis of promotion, is to be determined by competitive written examination or other personal selection process. It is the Commission's duty to advertise and effectively disseminate information concerning vacancies. It is an offence to attempt to influence the Commission concerning an appointment or promotion.

The Civil Service Act discriminates between male and female civil servants in providing that a female civil servant must retire on marriage. However, this is not enforced. Men and women are treated equally under The Public Service (Pensions) Act.<sup>8</sup>

#### Article 26

The Newfoundland Human Rights Code<sup>1</sup> prohibits discrimination on the basis of race, religion, religious creed, sex, marital status, political opinion, colour or ethnic, national or social origin in public accommodation, services or facilities, in employment or in the communications media. Where a person claims to be aggrieved by any of the above forms of discrimination, he may make a complaint to the Director of Human Rights who inquires

8. R.S.N. 1970, C. 319 as amended by S.N. 1972, No. 22; S.N. 1974, No. 87; S.N. 1977, C. 91.
1. R.S.N. 1970 c. 262 as amended by S.N., 1973 No. 34, (Schedule B) S.N., 1974 No. 114.

into the matter and endeavours to effect a settlement. If a settlement cannot be achieved, a Commission may be appointed to investigate and make recommendation which, when incorporated into a ministerial order, may result in prosecution or an injunction. Alternatively, an aggrieved person may, with the consent of the Minister of Justice, initiate legal proceedings before a court of summary jurisdiction.

While the Crown and its agents are bound by the Code, the Code is not to be construed as restricting or otherwise altering the force and effect of any provisions of other legislation.

With respect to employment practice provisions, an exemption is provided for an employer which is an exclusively religious or fraternal organization that is not operated for private profit and in respect of employment of a domestic employed and living in a single family home. Any limitation, specification or preference based on a bona fide occupational qualification is not considered discrimination within the meaning of the Code. A female employee employed in the same establishment as a male and who is performing, under the said or similar working conditions, the same or similar work on jobs requiring the same or similar skill, effort and responsibility is entitled to receive wages, opportunities for training and advancement, and pension rights and insurance benefits equal to those applicable to the male.

Discrimination on the basis of age, between the ages of nineteen and sixty-five, by employers, agencies or trade unions is prohibited except for termination pursuant to the terms and conditions of any bona fide retirement or pension plan, by the operation of any plan which has the effect a minimum service requirement as by the operation of the terms of any bona fide group or employee insurance plan.

## 6. NOVA SCOTIA

### Introduction

This chapter deals with the implementation of the Covenant in the Province of Nova Scotia.

### Article 2

Infringements on civil and political rights may be dealt with by common law remedies. The Human Rights Act, Stats. N.S. 1969, c.11 also applies. That Act prohibits discrimination based on race, religion, creed, colour or ethnic or national origin of the individual or class of individuals. The provision of the Act which declares this prohibition in a number of areas is Section 3, which reads as follows:

"Every individual and every class of individuals has the right (a) to obtain admission to and enjoyment of accommodations, services and facilities customarily provided to members of the public; (b) to acquire and hold any interest in property; (c) to opportunities available for employment; and (d) to full membership privileges in any employees' organization, employers' organization, professional association or business or trade associations, regardless of the race, religion, creed, colour or ethnic or national origin of the individual or class of individuals."

The Act was amended in 1972 to extend similar protection on the basis of sex. Section 11A reads as follows:

"(1) No person shall deny to, or discriminate against, an individual or class of individuals, because of the sex of the individual or class of individuals, in providing or refusing to provide any of the following:



(a) accommodation, services and facilities customarily provided to members of the public;

(b) occupancy, or any term or condition of occupancy, of any commercial unit or self-contained dwelling unit;

(c) transfer of any property or interest in property;

(d) employment, conditions of employment or continuing employment, or the use of application forms or advertising for employment, unless there is a bona fide occupational qualification based on sex.

(2) No person or agency included in subsection (2) of Section 8, or Section 9, 10 or 11 shall discriminate against an individual or class of individuals because of the sex of the individual or class of individuals or on account of marital status. 1972, c.65, s.2; 1977, c.18, s.16."

The Act also establishes a procedure whereby individuals who believe their rights under the Act have been violated can seek redress. The Human Rights Commission of Nova Scotia is empowered to receive complaints with regard to alleged violations of the Human Rights Act. If the Commission is unable to settle the dispute satisfactorily, the Minister responsible for the Act may appoint a Board of Inquiry. Under Section 26(A) of the Act, the Board may "order any party who has contravened this Act to do any act or thing that constitutes full compliance with the Act and to rectify any injury caused to any person or class of persons or to make compensation therefor". Any person who does anything prohibited by the Act or

refuses to comply with any order made under the Act is guilty of an offence and liable on summary conviction to the imposition of a fine (Section 29).

There has been an Ombudsman in Nova Scotia since 1971. The Ombudsman reviews complaints made by residents of the province against a government department or agency.

The province can be sued for wrongful act of its servants. The Proceedings Against The Crown Act, R.S.N.S. 1967, c.239.

### Article 3

Equality of rights between men and women in the areas covered by the Act are ensured by the Human Rights Act, Stats. N.S. 1969, c.11 as amended. As noted above, the Act prohibits discrimination based on sex. Also, various pieces of legislation which did discriminate between men and women have been, or are being, amended or replaced. See Bill No. 98, "An Act to Amend the Statute Law Respecting Women". Also, the "Married Women's Deeds Act", R.S.N.S. 1967, c.175, and the "Married Woman's Property Act", N.S.L.S. 1967, c.176 which allow married women to hold real and personal property. Also Statute Law Amendment Act, Stats. N.S. 1977, c.18. The latter Act amends a number of Nova Scotia statutes by eliminating adverse and unnecessary references to sex and ensuring equality of the sexes in the language of the statutes.

The Labour Standards Code of Nova Scotia, 1972, c.10, is also relevant to the implementation of this article of the Covenant. The Act requires equal pay for men and women according to Section 55 which reads, in part, as follows:

"An employer and any person acting on his behalf shall not pay a female employee at a rate of wages less than the rate of wages paid to a male employee employed by him for the same work performed in the same establishment, the performance of which requires equal skill, effort and responsibility, and which is performed under similar working conditions."

#### Article 4

In Nova Scotia there is an Emergency Measures Act, R.S.N.S. 1967, c.87. Under this legislation, the Governor in Council may make orders and regulations to ensure the continuity of the Government of the Province of Nova Scotia.

The relevant provision of the Emergency Measures Act is Section 10, which reads as follows:

"When the Governor in Council has declared that a state of emergency exists, the Minister, for the purpose of civil defence and during the continuance of the said emergency may, in the area in which the emergency exists, do such acts and take such proceedings as are deemed necessary for carrying out the purposes of this Act, and as he considers proper to put into effect any plans for civil defence."

There is no qualification or limitation to this power and the Act does not contain any provision for non-derogation

from observances of specific rights.

#### Article 6

Laws regarding health services indirectly contribute to the implementation of this article. The Health Services and Insurance Act, Stats. N.S. 1973, provides for provincial payment of most medical bills. The Nova Scotia Hospital Act is also pertinent.

#### Article 7

Common law remedies: torts of assault and battery. Also remedies under the Police Services Act, Stats. N.S. 1969, c.17. Specifically, Section 10 of this Act provides that "any person who has a complaint against a provincial civil constable may notify the Nova Scotia Police Commission by signing a complaint in writing and the Commission shall require the provincial civil constable to appear before the Commission and answer the complaint". The Act contains a similar provision with respect to municipal civil constables. See also information related to penal institutions under Article 10.

There is no specific legislation dealing with medical or scientific experimentation. However, consent is required before anyone is subject to any medical treatment: consent could, therefore, also be required for medical experimentation.



## Article 8

Court and Penal Institutions Act, R.S.N.S. 1967, c. 67. If there is a Court Order imposing labour, then an inmate can be forced to do hard labour. Under Section 13 of this Act, the sheriff in the municipality concerned may "from time to time direct or authorize the employment upon any work or duty beyond or in the limits of any jail, of any prisoner who is sentenced to be imprisoned with hard labour in the jail". The Act also provides that "no such prisoner shall be so employed except under the care and supervision of officers appointed to that duty".

With respect to labour generally, see the Labour Standards Act, Stats. N.S. 1972, c. 10.

Under S. 94 of the Lands and Forest Act, persons living in the area of a fire can be ordered to fight the fire.

## Article 9

The Liberty of the Subject Act, R.S.N.S. 1967, c. 164. This is the Provincial Habeas Corpus legislation.

The Nova Scotia Summary Proceedings Act, Stats. N.S. 1972, c. 18, adopts the Criminal Code of Canada legislation as it applies to summary conviction offences. This Act, inter alia, provides in Article 7 that no court is "bound by law to impose imprisonment upon a person convicted of an offence as a penalty or punishment for the offence". This principle applies even in

cases where the only penalty or punishment prescribed by the law for a particular offence is imprisonment. For a more detailed discussion of the Criminal Code provisions which have been applied to summary conviction proceedings in Nova Scotia under this Act, reference should be made to the discussion of the relevant Criminal Code provisions in the Federal portion of this report.

#### Article 10

Court and Penal Institutions Act, R.S.N.S. 1967, c.67. This allows for making of regulations dealing with prisoners. The regulations are made by the municipality but have to be approved by the province. The regulations are being revised. Under Section 39 of the Act, the regulations relate to the following areas: (a) the maintenance of prisoners in regard to diet, clothing, bedding and other necessities; (b) the employment of prisoners; (c) medical attendance; (d) religious instruction and chaplaincy service; (e) the conduct of prisoners and the restraint and punishment to which they may be subjected; (f) generally, the treatment and custody of prisoners, the interior economy and management of penal institutions and all such matters connected therewith as are considered expedient.

#### Article 11

One cannot go to jail because of inability to pay a contractual obligation. One can go to jail, however,

for fraud in relation to the debt, or pursuant to contempt of Court for refusing to pay as ordered by a Court without just cause. See the Collection Act, R.S.N.S. 1967, c. 39 and the Indigent Debtor's Act, R.S.N.S. 1967, c.136.

Under Article 14 of the Indigent Debtor's Act, imprisonment for fraud can follow from a number of situations, including fraudulent contracts, credit obtained under false pretenses and contracting a debt without any reasonable expectation of being able to pay. The same set of circumstances are listed in Article 27 of the Collection Act. The Act itself contains a general prohibition against imprisonment for debt in Article 3 as follows:

"Subject to this Act, no person shall be arrested or imprisoned for default in payment of any judgment ordering or judging the payment of money."

In general, the Act deals with proceedings by which a judgment creditor may enforce unsatisfied judgments.

#### Article 12

There is no provincial legislation guaranteeing freedom of movement. There is a recognized law by custom that you can move about freely. Anyone interfering with that right without lawful cause could be sued in the civil courts and also prosecuted under the Criminal Code.

Freedom of movement can be restricted in cases of emergency, such as forest fires.

Article 14

Except where a statute specifically states otherwise, all prosecutions of violations of provincial legislation are made pursuant to the Summary Proceedings Act. The Summary Proceedings Act adopts the summary conviction provisions of the Canada Criminal Code, which was discussed in the Federal section of this report.

Also, the Liberty of the Subject Act applies. This is basically a certification of the law of Habeas Corpus.

The Province of Nova Scotia has adopted the Family Court Act which established a Family Court system in the province. The Act defines a Family Court as "a juvenile court within the meaning of the Juvenile Delinquents' Act (Canada) and Part VIII of the Child Welfare Act." (Section 1(5)).

The Act provides that "the Governor in Council may by order confer on a Family Court exclusive original jurisdiction or concurrent or general jurisdiction over any or all charges, offences and matters arising" from a number of laws related to children or juvenile persons. (Section 3).

The Act provides that "The judge shall as far as possible guard against any publicity in proceedings in a Family Court." (Section 5 (2)). It also provides that "The place in which proceedings in a Family Court take



place shall not be deemed to be a public court..."

(Section 5 (3)).

#### Article 15

Legislation can be made to be retroactive if it is expressly stated to be retroactive. There are, however, in relation to penal legislation, strong common law principles disallowing the penal legislation to be retroactive.

#### Article 16

There is a common law right to personality which is recognized in Nova Scotia. There is no provincial legislation which could adversely affect the enjoyment of this right, except laws with respect to mental institutions.

With respect to mental institutions, see Nova Scotia Hospital Act, R.S.N.S. 1967, c.210; and, also, Municipal Mental Hospitals Act, R.S.N.S. 1967, c.202. Under the latter Act, a person may be committed to a municipal mental hospital on the certificates of two duly qualified medical practitioners, each of whom has examined the person (Section 11). The Act goes on to say that the person committed according to this procedure will be discharged on the anniversary date of his admission unless his detention is renewed pursuant to a determination by a duly qualified medical practitioner. In addition, the Act provides for the discharge

of a patient upon the application of a relative or friend of the patient. The relevant provision is Section 24 (1), which reads as follows:

"A patient or a relative or a friend of the patient or other interested party may, on five clear days' notice in writing to the superintendent of the hospital and to the inspector, apply to a judge of the county court for the discharge of the patient on the ground that he is not mentally disordered to a degree requiring his detention."

Similar provisions are to be found in the Nova Scotia Hospital Act.

#### Article 17

Various provisions of provincial legislation deal with the right to privacy.

The Defamation Act, R.S.N.S. 1967, c.72, gives a person the right to sue someone for making false statements. This Act incorporates into Nova Scotia statute law the common law actions of libel and slander.

The Freedom of Information Act, Stats. N.S. 1977, c.10, allows a person the right to get certain information from government agencies. In particular, Article 3 of the Act permits access to information respecting, among other things, "personal information contained in files (i.e. government departmental files) pertaining to the person making the request". Section 4 of the Act contains a number of qualifications which

govern the release of such information. For example, a person would not be permitted access to information which "might reveal personal information concerning another person". The Act also regulates the use which government departments can make of personal information. It provides for procedures in Section 6 for correction and amendment of incorrect information and restrictions on what use can be made of the information in question. The same article also prohibits a government department from making personal information available to another government department without the consent of the person involved.

The Consumer Reporting Act, Stats. N.S. 1973, c.4, gives a consumer the right to see the file that consumer reporting agencies have on him. The Act also sets down certain requirements to ensure that information kept by consumer reporting agencies is accurate (Section 10). In addition, the information cannot be procured or included in a report without the consent of the individual concerned. Finally, the Act contains extensive procedural provisions for enforcement and prosecution of persons who violate its provisions.

#### Article 18

The Nova Scotia Human Rights Act affirms, in its preamble, the principle that every person is free and equal in dignity and rights without regard to,

among other things, religion and/or religious creed, and, under section 3, it prohibits discrimination on that basis in all areas of activity covered by the Act. Section 74 of the Education Act directs that teachers instil Christianity in the children. This direction is included amongst the duties of teachers listed in Article 74 and reads as follows:

"Encourage the pupils by precept and example a respect for religion and the principles of Christian morality, for truth, justice, love of country, humanity, industry, temperance and all other virtues."

#### Article 19

Freedom of expression is recognized by common law and custom. With respect to members of the legislature, their freedom of expression is specifically guaranteed by the House of Assembly Act, R.S.N.S. 1967, c.128.

There is a Theatres and Amusement Act, R.S.N.S. 1967, c.304, which creates a Board. One of the functions of the Board is to censor. This function is described in rather general terms and must be understood in the context of the powers of the Board to regulate, license or prohibit any performance or performances in a theatre or theatres. The Act itself does not lay down conditions in accordance with which this power is to be exercised.

The Defamation Act, R.S.N.S. 1967, c.72, referred to above, is relevant in that it regulates



abuse of freedom of expression.

Sub-section 12(1) of the Human Rights Act prohibits discrimination by advertisement (see quotation of that sub-section below under Article 20). Sub-section 12(2) of the Act provides, however, that:

"Nothing in this Section shall be deemed to interfere with the free expression of opinion upon any subject in speech or in writing."

#### Article 20

The Nova Scotia Human Rights Act, Stats.

N.S. 1969, c.11, states that:

"No person shall publish, display or broadcast, or permit to be published, displayed or broadcast, on lands or premises, or a newspaper or through a radio or television broadcasting station or by means of any other medium, any notice, sign, symbol, implement or other representation indicating discrimination against any person or class of persons for any purpose." (Section 12(1)).

Also relevant to the implementation of this article is Section 8 (3) of the Human Rights Act, which states that:

"No person shall use or circulate any form of application for employment or publish any advertisement in connection with employment or prospective employment or make any inquiry in connection with employment that directly or indirectly expresses any limitation, specification or preference or invites information as to race, religion, creed, colour or ethnic or national origin."

#### Article 21

There is no provincial legislation dealing

with the right of peaceful assembly. Restrictions on assembly may be imposed for safety reasons.

#### Article 22

In Nova Scotia, labour legislation is dealt with under the following legislation: Labour Standards Code, Stats. N.S. 1972, c.10, the Trade Union Act, Stats. N.S. 1972, c.19. With respect to specific reference to freedom of association as it relates to forming trade unions, Article 12 of the Trade Union Act is relevant and reads as follows:

"Every employee has the right to be a member of a trade union and to participate in its activities."

There are, in addition, provisions which prohibit the interference of employers in the formation or administration of trade unions. The Act contains an extensive section on enforcement and penalties for contravention of its provisions.

There is specific legislation dealing with teachers, The Teachers Collective Bargaining Act, Stats. N.S. 1974, c.32, The Teachers Pension Act, R.S.N.S., 1967, c.301, The Education Act, R.S.N.S., 1967, c.81.

#### Article 23

The provincial legislation dealing with marriage legislation is the Solemnization of Marriage Act, R.S.N.S. 1967, c.287.

Parties to an intended marriage should obtain

a license to that effect. (Section 14 (1)). Persons under twenty-one years must have received consent in writing before being given the license. (Section 14(2) and 17). The minimum age required for marriage is 16, with exception for women expecting a baby. (Section 18).

#### Article 24

There is a Provincial Vital Statistics Act, R.S.N.S. 1967, c. 330, which requires the registration of the birth of every child born in the province. Notice of a birth or stillbirth has to be delivered or mailed to the Registrar within twenty-four hours by every person assisting. (Section 2). The mother of the child must complete and deliver or mail a statement respecting the birth to the Registrar within thirty days after the birth of the child. (Section 3(2)). "Upon receipt by the Registrar of a statement... within one year of the date of birth, the Registrar, if he is satisfied of the truth and sufficiency thereof, shall register the birth". (Section 3(11)). The Act makes provision for delayed registration. (Section 4).

There is a Children of Unmarried Parents Act, R.S.N.S. 1967, c.32, a Children's Maintenance Act, R.S.N.S. 1967, c.33, a Children's Services Act, Stats. N.S. 1976, c.8 and a Family Court Act, R.S.N.S. 1967, c.98, a Day

Care Services Act, Stats. N.S. 1970-71, c.13, and a Day Nurseries Act, R.S.N.S. 1967, c.71.

#### Article 25

Elections at the provincial level are dealt with under the Elections Act, R.S.N.S. 1967, c.83, and the Controverted Elections Act, R.S.N.S. 1967, c.55, and by the House of Assembly Act, R.S.N.S. 1967, c.128.

Elections at the municipal level are dealt with under the Municipal Franchise Act, R.S.N.S. 1967, c.198 and the Municipal Act, R.S.N.S. 1967, c.192.

Pursuant to Section 25 of the Elections Act, Nova Scotians have the right to vote in provincial elections, subject to age, citizenship and residency requirements. Similarly, all residents are entitled to run for office, subject to certain disqualifications relating to citizenship and holding of other offices.

Nova Scotia legislation also provides for periodic elections at the provincial (House of Assembly Act, R.S.N.S. 1967, c.128, s.14) level and the municipal level (Towns Act, R.S.N.S. 1967, c.309, s.29). The Elections Act ensures in Sections 169-188 that elections are free and genuine. The same statute provides for secrecy in voting and for recounting. There is also the Controverted Elections Act 4, N.S.R. (2nd) 426 which defines and provides remedies for corrupt provincial election practices.



The organization of the Public Service is set up pursuant to the Civil Service Act, R.S.N.S. 1967, c.34, the Civil Service Joint Council Act, R.S.N.S. 1967, c.35, the Public Service Act, R.S.N.S. 1967, c.255.

Positions in the Nova Scotia Civil Service are open to all persons without regard to race, religion, religious creed, colour or ethnic or national origin (Civil Service Act, R.S.N.S. 1967, c.34, s.52). Veterans and residents of the province are given priority. Under the same legislation, entry into the civil service is obtained by means of competitive examinations.

#### Article 26

Equality before the law means that each individual is treated equally before the law. This principle is recognized in Nova Scotia although there is no special legislation dealing with this principle. The Judicature Act, Stats. N.S. 1972, c.2, recognizes all common law and equitable rights. Under Article 2 we have outlined the provisions of the Human Rights Act, which are also pertinent to this article.

#### Article 27

The Recreation Act, Stats. N.S. 1973, c.14, is applicable in that it encourages "cultural programs ... beneficial to the people of the province".

## 7. ONTARIO\*

### Article 2

#### ONTARIO HUMAN RIGHTS CODE:

##### 1. Coverage

The Ontario Human Rights Code<sup>1</sup> provides basic protection in this area. The preamble of the Code expressly accepts the principles of the Universal Declaration of Human Rights and states that "it is public policy in Ontario that every person is free and equal in dignity and rights without regard to race, creed, colour, sex, marital status, nationality, ancestry or place of origin." Discrimination is also prohibited on the grounds of age (defined as 40 - 65 years of age) in employment situations. There is no protection from discrimination based on language, political or other opinion, or property. The Human Rights Code Review<sup>2</sup> which reported in 1977 has recommended that protection be extended to discrimination based on age (defined as 18 years of age and older), on deeply-held moral and political belief, family relationship, physical handicap, and sexual orientation. These recommendations are presently under consideration.

Discrimination is prohibited in six situations.

a) Section 1 of the Code prohibits the publishing or

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\* Report prepared by the Government of Ontario.

displaying of any notice, sign, symbol, emblem or other representation indicating discrimination or an intention to discriminate for any purpose on the prohibited grounds, with the proviso that this prohibition shall not be deemed to interfere with the free expression of opinion on any subject.

b) Section 2 of the Code specifies that no person shall deny to any person or class of persons accommodation, services or facilities available in any place to which the public is customarily admitted, or discriminate against any person or class in the provision of that accommodation, etc. on any of the prohibited grounds. An exemption is made for barring access because of sex upon the ground of public decency.

c) Section 3 of the Code specifies that no person shall deny to any person or class of persons occupancy of any commercial unit or any housing accommodation, or discriminate against any person or class with respect to any term or condition of occupancy on any of the prohibited grounds. Marital status is not intended as a prohibited ground with respect to housing. The Human Rights Code Review has recommended that marital status as well as the other new grounds of coverage be included in this section, and that the protection be extended to include the buying, selling, or renting of property. "Commercial unit" and "housing accommodation" are specifically defined in the Code.<sup>3</sup> The section does not apply where accommoda-

tion in a building is restricted to individuals who are of the same sex.

d) Section 4 of the Code prohibits persons from discriminating in employment practices; e.g. refusal to refer or recruit; dismissal or refusal to employ or continue to employ; refusal to train, promote or transfer; establishment or enlargement of periods of probation; establishment or maintenance of an exclusionary classification or category; maintenance of separate lines of progression or seniority lists; discrimination with regard to any term or condition of employment on any of the prohibited grounds. The prohibition extends to any discriminatory preference shown in the publication, display, etc. of words, symbols or other representations, in advertisements, employment application forms, written or oral inquiries, and the actions of employment agencies. Exemptions exist on all the prohibited grounds for exclusively religious, philanthropic, educational, fraternal, social, religious and ethnic organizations that are not operated for private profit; and for domestics employed in a single family residence. Exemptions exist on the grounds of age, sex and marital status for a bona fide occupational qualification and requirement, and bona fide superannuation, pension and insurance plans.

e) Section 4a of the Code prohibits trade unions and self-governing professions from expelling, suspending or



otherwise discriminating against any person or member in any of the prohibited grounds. The Code Review has recommended that this provision be extended to employers' organizations and occupational associations.

f) Section 5 of the Code prohibits reprisals against any person on the grounds that he or she has complained or participated in enforcement of the Act.

The prohibitions in the Code are binding on the Crown in right of Ontario and its agencies.<sup>4</sup>

## 2. Enforcement

The Human Rights Commission, composed of three or more members appointed by the Lieutenant Governor, is responsible for administration of the Code. Any person who has reasonable grounds for believing that the Code has been contravened may file a complaint with the commission and the commission itself may initiate a complaint. An officer of the commission must then inquire into the complaint and endeavour to effect a settlement. Where a complaint cannot be settled, the commission makes a recommendation to the Minister of Labour as to whether or not a Board of Inquiry should be appointed and the Minister, in his discretion, may appoint a Board consisting of one or more persons to hear and decide the complaint. A formal hearing is held at which the commission has carriage of the complaint, the parties are represented, oral evidence is re-

corded, and the findings of fact are based on evidence admissible or matters that may be noticed under sections 15 and 16 of The Statutory Powers Procedure Act, 1971.<sup>5</sup>

The Board then decides whether any party has contravened the Act, and if so, may order that party to do any act or thing that constitutes full compliance with the Code, and to rectify or make compensation for any injury caused. Any party to the hearing may appeal the decision of the Board to the Ontario Supreme Court on questions of law or fact or both.

Any person who contravenes any provision of the Code or any order made thereunder is guilty of an offence and, on summary conviction is liable to a fine of \$1,000. (if an individual) or \$5,000. (if a corporation, trade union, etc.). A prosecution for an offence may be instituted with the consent of the Minister of Labour. Where a person has been convicted of a contravention, the Minister may apply to the Ontario Supreme Court for an injunction against continuing the contravention.

There is no right of civil action in the courts for contravention of the Code.

THE OMBUDSMAN ACT, 1975:

The Ombudsman Act, S.O. 1975, c.42, creates the office of Ombudsman, and, in section 15, empowers him to investigate

any decision or recommendation made or any act done or omitted in the course of the administration of a governmental organization and affecting any person or body of persons in his or its personal capacity. The Ombudsman may launch an investigation on the basis of a complaint made to him or on his own initiative. The Ombudsman's powers may be exercised notwithstanding any provision in any Act to the effect that any decision, recommendation, act or omission is final or that no proceeding or decision shall be challenged, reviewed, quashed or called in question.

Under section 20 the Ombudsman may require any officer, employee or member of any governmental organization to furnish him with information in respect to a matter being investigated, and to produce documents or things which in the Ombudsman's opinion relate to the matter under investigation. The Ombudsman may examine on oath any person who is an officer or employee or member of any governmental organization. Persons who are bound by specific secrecy provisions and Acts cannot be required to supply information in contravention of those requirements. The ordinary rules of privilege which apply in court are also applicable. As well, under section 21, where the Attorney General certifies that the giving of information could interfere with the detection of offences, or might involve the disclosure of the deliberations or

proceedings of the executive counsel or of a committee of the executive counsel relating to matters of a secret or confidential nature and would be injurious to the public interest, the Ombudsman shall not require the information. Subject to the foregoing, the rule of law which authorizes or requires the withholding of any document, or the refusal to answer any question, on the ground that the disclosure or the answering would be injurious to the public interest, does not apply in respect of any investigation by or proceedings before the Ombudsman.

After making the investigation, the Ombudsman may find that the subject matter of the investigation appears to have been contrary to law; was unreasonable, unjust, oppressive, or improperly discriminatory, or was in accordance with a rule of law, statutory provision, or practice that is or may be unreasonable, etc; was based on a mistake of law or fact; was wrong; or was a discretionary power exercised for an improper purpose or on irrelevant grounds. In these cases, he may decide that the matter should be rectified, cancelled, varied, altered, that reasons should be given, or any other steps taken. He shall report his opinion and his reasons therefor to the appropriate organization and make such recommendations as he sees fit, requesting this organization to notify him, within a specified time, of the steps it



proposes to take to give effect to his recommendations. If no action is taken, the Ombudsman may, in his discretion, send a copy of the report and recommendations to the Premier and thereafter to the Assembly as he thinks fit. The complainant is to be informed of the result of the investigation and, where no adequate and appropriate action is taken within a reasonable time, of the recommendation of the Ombudsman.

#### CONVEYANCING AND LAW OF PROPERTY ACT

The Conveyancing and Law of Property Act,<sup>7</sup> s.22 specifies that any covenant made after March 24, 1950 that would annex to and run with the land restricting the sale, ownership, occupation or use of land because of race, creed, colour, nationality, ancestry or place of origin of any person is void and of no effect.

#### Article 2: Notes

<sup>1</sup>R.S.O. 1970, c. 318 as amended by S.O. 1971, vol. 2, c.50, s.63; S.O. 1972, c.119, and S.O. 1974, c.73.

<sup>2</sup>Ontario Human Rights Commission Life Together: A Report on Human Rights in Ontario, July 1977.

<sup>3</sup>Code s. 19 (aa) (e)

<sup>4</sup>Code s.6

<sup>5</sup>S.O. 1971, c.47

<sup>6</sup>S.O. 1975, c.42

<sup>7</sup>R.S.O. 1970, c.85, s.22.

Article 3

THE FAMILY LAW REFORM ACT, 1978

The Family Law Reform Act, 1978<sup>1</sup> (discussed under Article 23) acknowledges in the preamble the necessity of recognizing the equal position of spouses as individuals within marriage. S.65(1) of the Act declares that, for all purposes of the law of Ontario, a married man/woman has a legal personality that is independent, separate and distinct from that of his/her spouse, and s.65(2) declares that a married person has and shall be accorded legal capacity for all purposes and in all respects as if such person were an unmarried person. For greater clarification, it is expressly set out that the purpose of s.65(1)(2) is to make the same law apply, and apply equally, to married men and married women and to remove any difference therein resulting from any common law rule or doctrine. (s.65(4)). Each of the parties to a marriage, for example, is explicitly accorded a right of action in tort against the other as if they were unmarried; and a married woman is capable of acting as guardian ad litem or next friend as if she were an unmarried woman.

THE EMPLOYMENT STANDARDS ACT:

The Employment Standards Act, 1974, s.33 provides that no employer or person acting on his behalf shall discriminate

between his male and female employees by paying the female at a lower rate of pay than the male, or vice versa, for substantially the same kind of work performed in the same establishment, the performance of which requires substantially the same skill, effort and responsibility and which is performed under similar working conditions, except where such payment is made pursuant to a seniority system, merit system, system that measures earnings by quantity or quality or production, or a differential based on any factor other than sex. An employer is prohibited from reducing the rate of pay of an employee in order to comply with the equal pay requirement. This equal pay requirement applies to the Crown, every agency thereof, and any board, commission, authority or corporation that exercises any functions assigned or delegated to it by the Crown.<sup>2</sup> Where an Employment Standards Officer finds that there has been a violation, he may determine the amount of monies owing to an employee because of such non-compliance, and such amount shall be deemed to be unpaid wages.<sup>3</sup>

Article 3: Notes

<sup>1</sup>Bill 59, S.O. 1978 received Royal Assent March 16, 1978

<sup>2</sup>The Employment Standards Act, 1974, S.O. s.2(1)

<sup>3</sup>Ibid., s.33(4)

Article 4:

There is no relevant legislation. The Emergency Measures Act, R.S.O. 1970, c.145 which specified powers and responsibilities in the event of war, invasion, insurrection and natural emergencies has been repealed. (S.O. 1976, c.13).

Article 6:

As the death penalty is within federal jurisdiction, Ontario has nothing to report in that respect. What follows is in response to the specific questions suggested by the federal Department of Justice, as part of a broader interpretation of the right to life.

Insured health services are available to all residents of Ontario under The Health Services Insurance Act, R.S.O. 1970, c.200 (as amended S.O. 1974, c.60, c.86; S.O. 1975, c.52). The Homes for Special Care Act, R.S.O. 1970, c.205 provides for establishing and licensing homes for the care of persons requiring nursing, residential or sheltered care. There is no legislation in Ontario which would allow a doctor, in case of emergency, to offer medical services without fear of civil action.

Welfare services are administered under The General Welfare Assistance Act, R.S.O. 1970, c.192 (as amended S.O.



1971, Vol 2, c.50, s.44; S.O. 1974, c.96), and The Family Benefits Act, R.S.O. 1970, c.157 (as amended S.O. 1971, Vol. 2, c.50, s.38; S.O. 1971, vol. c.92; S.O. 1972, c.151; S.O. 1974, c.98). Workmen's Compensation is administered under The Workmen's Compensation Act, R.S.O. 1970, c.505 (as amended S.O. 1971, vol.2, c.62, c.98; S.O. 1973, c.173; S.O. 1974, c.70; S.O. 1975, c.47; S.O. 1977, c.41).

Article 7:

These principles are promoted by a number of Ontario statutory provisions:

(i) The Ministry of Correctional Services Act, S.O., 1978 (Bill 85) provides in section 4 that the Ministry is to supervise the detention and release of inmates, parolees and probationers and to create for them a social environment in which they may achieve changes in attitude by affording training, treatment and services designed to afford an inmate, parolee or probationer the opportunity for successful personal and social adjustment in the community. That section goes on to state that the objects of the Ministry include the provision of programmes and facilities designed to assist in the rehabilitation of inmates. Section 17 empowers the Minister, if he believes that a correctional institution is

insecure or unfit for the safe custody of inmates, to direct that the inmates be transferred to another institution. Section 22 permits the Minister to designate inspectors and to dismiss any employee of the Ministry who obstructs an inspection or withholds, destroys, conceals or refuses to furnish any information or thing required by an **inspector** for the purpose of the inspection. Section 23 permits the Minister to appoint a person to make an inquiry into any matter to which the Act applies. Recently a three year study was conducted by a County Court Judge into conditions at the Don Jail. Section 24 provides that the director or superintendent of an institution must arrange for hospital treatment at a public hospital for any inmate who requires hospital treatment that cannot be supplied at the institution. Hospitalization in a psychiatric facility must also be arranged where it is required. Section 25 permits the establishment of rehabilitation programmes under which inmates may work at their regular employment, obtain new employment, attend academic institutions, or participate in other rehabilitative programmes. Under section 26, the Minister may authorize an inmate or group of inmates to participate in a work project or rehabilitation programme beyond the limits of the correctional institution in which they are confined. Temporary absence

from the institution for medical or humanitarian reasons or to assist in rehabilitation may be authorized under section 27 of the Act.

ii) The Ombudsman Act (discussed under Article Two) Section 17 provides that letters written by inmates of provincial correctional institutions or training schools or patients in provincial psychiatric facilities addressed to the Ombudsman must be immediately forwarded, unopened, to him. Section 10 of The Ministry of Correctional Services Act exempts from the secrecy requirements imposed on employees, communications made by them to the Ombudsman. It is worth noting that the Ombudsman recently completed an extensive investigation into the conditions at all of the provincial correctional institutions.

iii) The Police Act, R.S.O., 1970, c.351 in section 24 makes the chief of each police force liable in respect of torts committed by members of the police force under his direction and control in the performance or purported performance of their duties. Under section 42 the Ontario Police Commission or the Commissioner of the Ontario Provincial Police may hold an inquiry into the conduct of any member of the Ontario Provincial Police Force or of any

employee connected therewith. Section 47 makes the Commissioner of the Ontario Provincial Police liable in respect of torts committed by members of the force in performance or purported performance of their duties. Section 56 empowers the Ontario Police Commission to investigate, inquire into and report upon the conduct of or the performance of duties by any chief of police, other police officer, constable, special constable or by-law enforcement officer, the administration of any police force or the system of policing in a municipality.

iv) Under The Mental Health Act, R.S.O. 1970, c.269 (as amended by the Mental Health Amendment Act, 1978: Bill 19 S.28), a person involuntarily detained in a psychiatric facility or any person on his behalf may apply to a review board which shall conduct such inquiry it considers necessary. The review board may hold a hearing; if it does the patient may attend unless otherwise directed by the chairman of the board; in that instance the patient may have a person appear as his representative. Under Section 30, the chairman of the review board must prepare a written report of the decision of the board and transmit a copy to the applicant. Section 28(3) provides an automatic review by the review board after every six months and then every twelve months thereafter.



v) The Health Disciplines Act, S.O. 1974, c.47 establishes in section 57 a complaints committee which must consider and investigate complaints made by members of the public regarding the conduct or actions of physicians practicing in Ontario.

vi) There is no provincial legislation as yet with respect to consent to medical or scientific experimentation.

#### Article 8

Slavery is non-existent in Ontario.

The Ministry of Correctional Services Act, 1978<sup>1</sup>, does not require inmates to perform compulsory labour within the meaning of the Covenant. If an inmate, however, wishes to reduce his sentence by earning remission pursuant to s.28 of the Act, he may have to participate in work programs or perform other labour within the institution.

The Fires Extinguishment Act<sup>2</sup> provides that a municipal authority may, by by-law, empower fire guardians, whenever the woods or prairies are on fire so as to endanger property, to order as many male inhabitants residing in the vicinity as may be necessary to assist in extinguishing the fire.

#### Article 8: Notes

<sup>1</sup>S.O. 1978, c.37

<sup>2</sup>R.S.O. 1970, c.173, s.1

Article 9:

There is no general power of arrest in Ontario. Arrest is only possible where it has been specified in a particular section of a particular Act for particular conduct. Accordingly, all of the arrest powers available in Ontario have been subject to legislative debate.

i) The Summary Convictions Act, R.S.O. 1970, c.450 incorporates by a reference the provisions of the Criminal Code of Canada relating to the arrest and release of persons who have committed offences. In essence these restrict the power of arrest without a warrant to peace officers and persons who assist peace officers by preventing an escape from a lawful arrest. A peace officer may only arrest a person without a warrant if he finds him committing an arrestable provincial offence or has reasonable and probable grounds to believe that a warrant is in force within the territorial jurisdiction in which the person is found. Generally, the power of arrest is restricted to circumstances where it is needed to establish the identity of the person, secure evidence, or prevent the continuation of the offence. In lieu of arresting the person the peace officer may issue an appearance notice. If an arrest is made the peace officer or the officer in charge of the lock-up to which the offender

is taken, may release the offender on his promising in writing to appear. The officer in charge may require a recognizance in an amount not exceeding \$500 without deposit unless the person resides outside the jurisdiction in which case a deposit of more than \$500 can be required. If the offender is not released or is arrested on a warrant which does not provide for release by the officer, he must be taken before a justice within a period of twenty-four hours or if a justice is not available within that time period, as soon as possible. Where an offender is taken before a justice the justice must release the accused from custody, with or without conditions, unless the prosecutor shows cause why the detention of the accused is justified. Detention is justified only on either of two grounds: one, that detention is necessary to assure attendance in court; two, that detention is necessary in the public interest or for the protection or safety of the public having regard to all the circumstances including any substantial likelihood that the accused will, if released, commit a criminal offence or an interference with the administration of justice. (See sections 449 to 459 of the Criminal Code.) The Code also provides that it is the duty of everyone who arrests a person whether with or without warrant, to give notice to that person, where it is feasible to do so, of the process or warrant under which

he makes the arrest or the reason for the arrest. Failure to comply with this provision does not of itself deprive a person who executes process or warrant or a person who makes an arrest or those who assist them of protection from criminal responsibility. (See section 29 of the Criminal Code.) A warrant to arrest a person must set out the offence in respect of which the accused is charged. (See section 456(1) (b) of the Criminal Code.) The Criminal Code also provides that where a person is detained in custody for thirty days prior to his trial, the person having custody of him must apply to a judge to fix a date for a hearing to determine whether or not the accused should be released from custody.

ii) The Habeus Corpus Act, R.S.O. 1970, c.197 provides for a review of detention unless the imprisonment results from a debt, process in any action, or the judgment, conviction or order of a court of record. The Habeus Corpus Act does not apply where a person is imprisoned under The Fraudulent Debtors Arrest Act R.S.O. 1970, c.183. A person arrested under that Act may, however, apply to the court or a judge for an order that he be discharged. A decision made on this application can be reviewed by the Court of Appeal.



iii) Under The Mental Health Act, as amended, a person who is involuntarily admitted to a psychiatric facility must be examined within seventy-two hours of that admission to determine whether he ought to be released or detained. Strict statutory criteria set out the grounds for continued detention. An involuntary patient may be detained, restrained, observed and examined in a psychiatric facility for not more than two weeks under a certificate of involuntary admission. Thereafter the certificate may be renewed for one additional month, then for two additional months, and finally for three additional months, each time upon a new certificate of involuntary admission which can be completed only after an examination. Again, the statute sets out the grounds upon which a person's detention may be continued. (See section 13.) Under section 28 of the Act an involuntary patient or any person on his behalf may apply to a review board to have an inquiry held into whether the patient is properly detained. There is an automatic review of the patient's detention after six months and thereafter every twelve months. The review board may or may not hold a hearing, but if a hearing is held, the patient may attend in person or through a representative. Whether or not a hearing is held, a report of the decision of the review board must be prepared and given to the applicant.

Article 10:

The Ministry of Correctional Services Act, 1978 discussed in detail under Article 7, conforms with this covenant referring to the treatment of prisoners.

Although primary jurisdiction for juveniles is federal under The Juvenile Delinquents Act (Canada), there are several provincial statutes which govern the treatment of juveniles.

i) The Child Welfare Act, R.S.O. 1970, c.64 in s.45(1), section 56(1) of the new Act, \* specifies that a child who is charged with an offence or brought before a judge under this Act shall not, before his trial or hearing, be confined in a place used for persons charged with crime.

ii) The Provincial Courts Act, R.S.O. 1970, c.369, s.21(1) establishes observation and detention homes as part of a Provincial Court (Family Division). The superintendent and assistant superintendent of a detention home are officers of that particular family court and required to act in accordance with the directions of the presiding family court judge. S.22 specifies that the Minister of Community and Social Services may declare any place, house, home or institution a detention home. The diverse nature of juvenile detention services in the province has stimulated proposals for new legislation which would empower the Minister to establish, operate and maintain

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\*The Child Welfare Act is to be repealed upon the entry into force of the new Child Welfare Act, 1978 which received Royal Assent December 15, 1978 and is expected to come into force around April 1st, 1979.

detention homes (including those which presently exist)<sup>1</sup> and which would apply to detention homes the same conditions and standards of care as are applicable to other children's residences licensed by the government.<sup>2</sup>

iii) The Training Schools Act, R.S.O. 1970, c. 467 regulates institutions established to provide children with training and treatment and with moral, physical, academic and vocational education (s.2). As the present legislation and regulations prescribe only limited standards (re. record-keeping, medical care and supervision of wards) to be followed in these facilities, legislation has been proposed which would require juvenile corrections facilities to meet the same range of standards (re. physical plant, staffing and levels of care) as are being developed for all children's residential care facilities throughout the province.<sup>3</sup>

#### Article 10: Notes

The Provincial Courts Amendment Act, 1978 s.1; the Act received Royal Assent November 30, 1978 and is expected to come into force around April 1st 1979.

The Children's Residential Services Act, 1978.s.1; the Act received Royal Assent November 30, 1978 and is expected to come into force around April 1st 1979. See also Ministry of Community and Social Services, Children's Services Division, Consultation Paper on Short Term Legislative Amendments.

<sup>3</sup>Ibid., pp. 69-75, 89.

Article 11:

Debtor's prisons have been abolished in Ontario, and no person is liable to arrest for contempt for non-payment of money.<sup>1</sup> A court, however, might use contempt proceedings where a defendant refuses to obey its order to pay a debt. In addition, where a judge is satisfied that there is a cause of action against a person for not less than \$100.00, and that there is good and probable cause for believing that such person is about to leave Ontario with the intent of defrauding his creditors, the judge may order that the person be arrested and be required to give security for such sum as the judge thinks fit.<sup>2</sup> Defendants may give the security by payment into Court or by bond to the Plaintiff,<sup>3</sup> and upon obtaining certificate of payment, are entitled to be discharged from custody.<sup>4</sup>

Article 11: Notes

<sup>1</sup>The Fraudulent Debtors Arrest Act, R.S.O. 1970, c.183, s.12.

<sup>2</sup>Ibid., s. 1

<sup>3</sup>Ibid., s. 14.

<sup>4</sup>Ibid., s.20(2).

Article 14:

All civil proceedings and provincial offence proceedings



in Ontario are determined by judges or justices of the peace. (See The Judicature Act, R.S.O. 1970, c.228, The County Judges Act, R.S.O. 1970, c.95, The Provincial Courts Act, R.S.O. 1970, c.369 and The Small Claims Courts Act, R.S.O. 1970, c.439). Judges appointed by the province of Ontario to the Provincial Court may be removed from office before attaining retirement age only for misbehaviour or inability to perform their duties properly. Further, such removal can take place only after an inquiry, the report of which must be laid before the Legislative Assembly. Only the Lieutenant Governor-in-Council may remove a judge from office. A judicial council has been created to which complaints concerning the conduct of judges may be made. (See sections 4 and 8 of The Provincial Courts Act, supra.) Under section 84 of The Judicature Act, supra, the judge presiding at a hearing or trial of a cause or matter may order that the public be excluded from the court if he deems it to be in the interest of public decency and morals.

Under the procedure established for the prosecution of provincial offences, the charge against a defendant must be set out with great particularity in a written information. The court may, if it feels that it is necessary for a fair trial, order that a particular further describing any matter relevant to the proceedings be furnished to the defendant. Where the defendant appears for trial, the substance of the

information shall be stated to him. There is no right to have the information prepared in any language other than English. The defendant is entitled to make his full answer and defence and may examine and cross-examine witnesses personally or by counsel or agent. The court has jurisdiction to adjourn the proceedings where it finds it appropriate to do so. If the court dismisses the information it may draw up an order of dismissal and must give the defendant a certified copy thereof. A copy of this order is without further proof, a bar to any subsequent proceedings against the defendant in respect of the same cause. There is an unfettered right of appeal from provincial offence proceedings either to the County Court or the Supreme Court of Ontario. A further appeal may be taken from that appeal to the Court of Appeal with leave of that court. (See sections 723, 729, 736, 737, 738, 739, 748, 762 and 771 of the Criminal Code of Canada, incorporated into the law of Ontario by section 3 of The Summary Convictions Act, supra.)

Under section 8 of The Evidence Act, R.S.O. 1970, c.151, the defendant to a charge of a provincial offence is a compellable witness against himself. The Provincial Offences Act, Bill 74, S.O. 1978, s.45(5) repeals this provision.

The premise of The Legal Aid Act, R.S.O. 1970, c.239,

is that those people who cannot afford to pay a lawyer are entitled to receive legal assistance. Under the provisions of The Legal Aid Act, supra, a person who is charged with a criminal offence carrying a penalty of more than six months incarceration is entitled as of right to free legal assistance. The accused person may have as his counsel any lawyer who will accept payment under the legal aid plan. A person who is charged with a provincial offence or with a crime or other federal offence carrying a maximum penalty of less than six months, may be given free legal services if upon conviction there is a likelihood of imprisonment or loss of means of earning a livelihood. Again, the accused may choose his or her counsel. Free legal services are also available, as a matter of discretion, in proceedings in the Provincial Court (Family Division). Free legal services for the purpose of appeals are also available on a discretionary basis. (See sections 12, 13 and 14 of The Legal Aid Act, supra).

Ontario has established the Provincial Court (Family Division) to hear allegations against juveniles under The Juvenile Delinquents Act (Canada). That court may also try any child charged with an offence against the laws of Ontario.

Several Ontario statutes ensure that issues affecting juveniles are determined in private. The Child Welfare Act, R.S.O. 1970, c.64, s.46, section 57 of the new Act, provides that when a child is brought before a judge in "protection" proceedings, the hearing is to be

held in specialized or private premises, and not in premises ordinarily used for hearing by provincial court (criminal division). (ss.1) The judge is to exclude from the room all persons, other than counsel and witnesses in the case, officers of the law or of a children's aid society, and friends and relatives of the child or parent as the judge thinks proper (ss.2). There is a prohibition against any publication of the name of the child or his parent, except with leave of the person holding the hearing (ss.3). The Unified Family Court Act, 1976, S.O. 1976, c.85 s.9 specifies that the Court may exclude the public from a hearing, or any part thereof, where the desirability of protecting against the consequences of possible disclosure of intimate financial or personal matters outweighs the desirability of holding the hearing in public.

The Child Welfare Act, 1978 established new rules which allow both greater judicial discretion and more public access to juvenile court processes. There is a directive in s.57 that all persons shall be excluded from the hearing unless otherwise directed by the Court. Notwithstanding this provision, certain persons may be present at a hearing: the person acting as prosecutor or his agent, the child who is party to the proceedings and his representative, the child's parent and their representative, a representative of the children's aid society, and any other person entitled to notice of the hearing. The



court orders whether the child who is subject to the proceedings shall be present or excluded, using the presumptions that a child ten or more years of age is entitled to be present unless the court is satisfied that the effect would be injurious to his emotional health, and that a child under ten years shall not be present unless the court is satisfied that the hearing or any part thereof would be understandable to the child and not be injurious to the emotional health of the child (s.33). In addition, two representatives of the press, radio and television media (as agreed among themselves) may be present at a hearing (except a hearing to expunge a name from the child abuse register), unless the court thinks that their presence would be injurious to the emotional health of the child before the court in which case, the court shall give reasons for their exclusion (s.57(4)). The ban remains on publishing any information that has the effect of identifying any child, parent, foster parent, or member of the child's family present at the proceedings, or any person charged with an offence in the proceedings (s.57(7)).

The Child Welfare Act also conforms to Article 14.4 with respect to procedures that shall take account of the age of juvenile persons and the desirability of promoting their rehabilitation. Where the parent of a child is under eighteen years of age, the Official Guardian or some other person appointed by the judge shall be guardian ad litem of the parent

(s.20(4), section 19(4) of the new Act). A decision granting or refusing an order that a child is in need of protection may be appealed by a parent or other person who has had immediate charge of the child, the local child welfare director, or a next friend on behalf of the child, and the appeal shall be heard at the first court sitting held after the notice of appeal has been filed and served (s. 36, s. 43 of the new Act). In the new Act, in addition to the appeal right, there are rights of review of temporary care agreements (s.25(13)), supervision orders (s.32 (1 and 4)), access orders (s.35(1)), orders for a society wardship (s.37 (1 and 2)) and Crown wardships (s. 38 (1 and 2)). These rights belong basically to a parent of a child or to the child himself or herself.

Article 15:

Section 14 (2)(d) of The Interpretation Act, R.S.O. 1970, c. 225 provides that if penalty provisions are repealed and other penalty provisions substituted, then if any penalty, forfeiture or punishment is reduced or mitigated, the penalty, forfeiture or punishment, if imposed or adjudged after such repeal or revocation, shall be reduced or mitigated accordingly.

Article 16:

Under the old law, a distinction was made between a child born out of wedlock and one born of a marriage. Although

statute law did not make the distinction, it did not alter the common law position which never regarded an "illegitimate" child as a child of his parents unless the wording of a grant, will, etc., expressly declared otherwise. This situation has been recently changed. The Children's Law Reform Act, 1977, S.O. 1977, c.41, recognizes the independent status of all children for all purposes of the law of Ontario, whether the child is born within or outside marriage (sec.1(1)), thereby placing all children in a similar position. The rights of children as "persons" under the law of Ontario are discussed under Article 24.

Mentally incompetent individuals are treated as "persons" before the law and can sue or be sued, but under the Mental Incompetency Act, R.S.O. 1970, c.271, many of their rights are exercised by others on their behalf. Once a person is declared mentally incompetent, the Court has all the powers, jurisdiction and authority of Her Majesty over the person and estate, including the care and commitment of the custody of the person and estate (s.4(1)). The Court appoints a committee of the person and/or of his estate, propounds a scheme for the management of his estate and fixes a time for the passing of accounts (s.12). The Court in its discretion, or the committee if authorized by the Court, may manage and administer the estate for the mainte-

tenance and benefit of the person or his family or, if expedient, in the due course of management of his property (s.14). The committee may also be authorized to carry on any trade or business of the person, grant leases, perform contractual obligations of the mentally incompetent person, invest his money, etc. (s.18). Property may **be sold only** by order of the Court and then only to pay debts, discharge encumbrances or to pay debts incurred or to make provisions necessary for the maintenance of the person or otherwise for his benefit (s.16).

Article 17:

Ontario law conforms, with certain qualifications. The Libel and Slander Act, R.S.O. 1970, c.243, s.3 makes a number of exceptions for what are termed "privileged reports". These include fair and accurate newspaper or broadcast reports, without malice, of proceedings before Courts, the legislature, tribunals, public meetings, or private meetings concerning issues of public concern etc. but nothing is deemed to authorize any blasphemous, seditious or indecent matter. Common law privileges are also retained. However, if the defendant refuses to publish or broadcast a reasonable statement of explanation or contradiction by the plaintiff, the protection of the Act will not be available (s.5).



The Petty Trespass Act R.S.O. 1970, c.347 s.1 creates an offence for invading the privacy of another by trespassing on his land whether or not any damage is occasioned thereby.

The Planning Act R.S.O. 1970, c.349 creates a number of situations which qualify the common law right of an individual to do what he wants with his land. Municipal councils, for example, have the power to pass by-laws which, inter alia, prohibit the use of land except for particular purposes, prohibit the erection or use of buildings except for specified purposes, and regulate the cost or type of construction and the height, type, bulk, location, size, etc. of buildings or structures (s.35(1)). Non-conforming uses which exist when a new by-law is enacted, however, are protected, so long as such use continues (s.35(7)). Where a by-law prescribing maintenance or occupancy standards is in effect, a property standards officer has the right to enter and inspect any property at all reasonable times (s.36(4)). Unless he has the owner's consent, however, such officer can enter a private dwelling only under the authority of a search warrant.

The Public Health Act, R.S.O. 1970, c.377 authorizes a number of invasions of privacy. The Department of Health, for example, can enter and inspect premises to ensure proper sanitary conditions or investigate the causes of communicable

diseases. Orders can be made to remove unsanitary conditions or nuisances (s.5), and to have houses disinfected (s.29), and infected articles destroyed (s.32). Suspected carriers of disease can be required to submit to an examination (s.70), and be moved to a hospital (s.73). Where a house is in a filthy and neglected state, all inhabitants can be removed and housed elsewhere until measures are taken to clean, ventilate, purify and disinfect the house (s.75).

Regulation 815 of The Training Schools Act, R.S.O. 1970, c.467 authorizes authorities to read letters to and from wards, and to stop any correspondence thought to be contrary to the best interest of the ward or other recipient (s.23). Only correspondence to and from a solicitor, the Minister or Deputy Minister, and any member of the legislature is excluded. Gifts can be sent or received only with permission (s.29).

The Mental Health Act, R.S.O. 1970, c.269 contains similar, though less onerous, restrictions regarding mail of patients in mental hospitals. Mail may not be withheld, obstructed or delayed unless the officer has reasonable cause to believe that the contents would be unreasonably offensive to the addressee, or would prejudice the best interests of the patient, interfere with his treatment, or cause him un-

necessary distress. Again, letters to or from a lawyer, the Review Board, or a Member of the Legislative Assembly are not subject to scrutiny (s.19).

The Telephone Act, R.S.O. 1970, c.457, creates an offence for interfering with any telephone equipment so as to injure or damage it (s.110), or for divulging knowledge of any conversation passing over a telephone line unless lawfully authorized to do so (s.111, 112).

The Summary Convictions Act, R.S.O. 1970, c.450 specifies a procedure to control the search and seizure powers of the police in relation to provincial offences (s.16). After a Justice of the Peace is satisfied that there is reasonable grounds to believe that something relevant to the offence exists in the building, a search warrant is issued and, unless specially authorized, executed between sunrise and sunset. If no conviction follows, the object must be restored to the person from whom it was taken.

The Statistics Act, R.S.O. 1970, c.443 authorizes agreements with the Government of Canada or another province to exchange or jointly collect, analyze and publish statistical information relative to the economic, financial, industrial, commercial, social and general activities and condition of persons (s.1(b)). An oath of secrecy is required of all

persons collecting or working with the information and disclosure can be made only with the permission of the Minister, and only to public servants (s.4).

The Private Investigators and Security Guards Act, R.S.O. 1970, c.362 provides for the licencing of private investigators, but does not delineate the means by which investigators may collect information or the types of information which they may collect. There is an explicit prohibition, however, against anyone's divulging any information acquired as a private investigator except as is legally authorized or required (s.24).

The Landlord and Tenant Act, R.S.O. 1970, c.236, provides that, except in emergencies, or where the landlord has a right to show the premises to prospective tenants after notice of termination, a landlord cannot enter rented premises without giving the tenant at least twenty-four hours written notice (s.93). A landlord in breach of the privacy provision may be subject to a proceeding by way of summary conviction (s.108(1)), and to a civil action brought by the tenant.

The Public Inquiries Act, S.O. 1971, Vol. 2, c.49 empowers the Lieutenant-Governor by commission to appoint a person or persons to conduct an inquiry into any matter connected with or affecting the Government of Ontario. Such



inquiries must be open to the public unless the Commission is of the opinion that matters involving public security or intimate financial or personal matters may be disclosed such that the interests of the person involved or the public interest outweighs the desirability of adhering to the principle that hearings be open (s.4). Under Part III the Commission may appoint investigators who may obtain a warrant to enter and search any premises, if there are reasonable grounds to believe that there are any documents or things relevant to the inquiry (s.17). Any material person who has failed to attend the inquiry, may be apprehended by warrant and brought before the Commission (s.16). These Part III powers are invoked only when the Lieutenant-Governor considers it necessary to do so in order to achieve the purposes of an inquiry (s.15).

#### Article 18

##### SUNDAY CLOSING:

Religious observance is facilitated by the federal Lord's Day Act, R.S.C. 1970, c.L-13, as modified by The Lord's Day (Ontario) Act.<sup>1</sup> This latter statute enables municipalities to exercise a local option to pass bylaws permitting sports events, horseracing, movies, and theatrical performances, musical concerts, agricultural, horticultural

or trade exhibitions or shows after 1:30 o'clock in the afternoon on Sundays.

The Retail Business Holidays Act, 1975<sup>2</sup> generally prohibits persons carrying on a retail business from offering their goods or services for sale on a holiday. "Holiday" is defined to include Sunday, the traditional Christian holidays, and other public holidays. Among several exemptions is a provision exempting those merchants who close their premises to observe a religious holiday on Saturday.<sup>3</sup>

EDUCATION:

The Education Act S.O. 1974, c.109 provides generally that a pupil shall be allowed to receive such religious instruction as his parent or guardian desires or, where the pupil is an adult, as he desires. No pupil in a public school shall be required to read or study in or from a religious book, or to join in an exercise of devotion or religion, objected to by his parent or guardian, or by the pupil, where he is an adult.<sup>4</sup> School holidays include many of the traditional Christian holidays, but a child may be excused from attendance if he is absent on a day regarded as a holy day by the church or religious denomination to which he belongs.<sup>5</sup>

The Education Act also specifies that it is the duty of a teacher "to inculcate by precept and example respect for

religion and the principles of Judeo-Christian morality..."<sup>6</sup>. Statutory provision exists for the establishment of separate schools for Roman Catholics<sup>7</sup> and separate schools for Protestants.<sup>8</sup>

#### OATHS OF OFFICE

The Evidence Act<sup>9</sup> provides that when a person objects to being sworn on the Bible from conscientious scruple or religious belief, he may make an affirmation or declaration that is of the same form and effect as an oath in the usual form.

#### TRADE UNIONS

The Labour Relations Act<sup>10</sup> provides that where an employee because of his religious conviction or belief objects to joining a trade union, or objects to the paying of dues or other assessments to a trade union, the Ontario Labour Relations Board may order that such employee be exempted from any closed shop provision, provided that he pays an amount equal to any union dues or assessments to a charitable organization agreed upon by the employer and the trade union. This provision does not apply to employees whose employment commences after the collective agreement providing for a closed shop has been entered into.

HUMAN RIGHTS CODE:

The Code prohibitions against discrimination in employment<sup>11</sup> because of creed provide some protection to employees whose religious convictions conflict with hours they are required to work. The Human Rights Commission uses education and persuasion to encourage employers to adopt a flexible schedule that makes allowance for the religious practices of their employees.

Article 18: Notes

<sup>1</sup>R.S.O. 1970, c.259 as amended by SO 1974, c.68

<sup>2</sup>S.O. 1975 (2nd Session) c.9

<sup>3</sup>Ibid, s.3(4)

<sup>4</sup>The Education Act, 1974, S.O. 1974, c.109, s.48

<sup>5</sup>Ibid, s.20(2)(g)

<sup>6</sup>Ibid, s.229(1)(c)

<sup>7</sup>Ibid, Part IV ss.79-133

<sup>8</sup>Ibid, Part V, ss. 134-145

<sup>9</sup>R.S.O. 1970, c.151, s.17,18(1).

<sup>10</sup>R.S.O. 1970, c.232 as amended by S.O. 1975, c.76 and S.O. 1977, c.31, s.39.

<sup>11</sup>Discussed under Article 2, s.4.



Article 19

THE LIBEL AND SLANDER ACT

Freedom of opinion and expression is limited to the extent required by the laws of libel and slander. The Libel and Slander Act<sup>1</sup> defines the torts, specifies a number of exceptions for "privileged reports", and outlines the procedures for court action.

THE THEATRES ACT

The Theatres Act<sup>2</sup> empowers a Board of Censors to censor films and cut any portions that it does not approve for exhibition; to approve, prohibit and regulate the exhibition of films and advertising; and to classify films as adult and restricted entertainment. Before being exhibited in Ontario, all films must be submitted to the Board for approval.

THE PUBLIC SERVICE ACT<sup>3</sup>

Except during a leave of absence for election candidates, a Civil Servant shall not at any time speak in public or express views in writing for distribution to the public on any matter that forms part of the platform of a provincial or federal political party.<sup>4</sup>

Article 19: Notes

<sup>1</sup>R.S.O. 1970, c.243

<sup>2</sup>R.S.O. 1970, c.459 as amended by 1971, Vol. 2, c.50, s.82; 1972, c.1, s.56; 1975, c.60.

<sup>3</sup>R.S.O. 1970, c.386 as amended by 1972, c.1, s.107; 1972, c.96; 1973, c.85

<sup>4</sup>Ibid, s.14

Article 20:

As discussed with respect to Article 2, the Ontario Human Rights Code s.1 prohibits the publishing or displaying of any notice, sign, symbol, emblem or other representation indicating discrimination or an intention to discriminate against any person or class of persons for any purpose because of race, creed, colour, sex, marital status, nationality, ancestry or place of origin of such person or class.

Article 21:

The Public Halls Act R.S.O. 1970, s.2 c.376, prohibits any public hall from being offered or used as a place of public assembly unless the owner holds a licence from the local municipal authority. An application for a licence, however, cannot be refused until after a hearing by the licencing authority.

Article 22:

OCCUPATIONAL AND PROFESSIONAL ASSOCIATIONS:

The right to freedom of association in certain professional and occupational societies is restricted by prerequisites for membership based on level of education, experience, financial reliability and similar criteria. Occupations subject to such statutory regulation are Architects<sup>1</sup>, Chiropractors<sup>2</sup>, Dental Technicians<sup>3</sup>, Dentists<sup>4</sup>, Dental Therapists<sup>5</sup>, Doctors,<sup>6</sup> Drugless Practitioners<sup>7</sup>, Embalmers and Funeral Directors<sup>8</sup>, Lawyers<sup>9</sup>, Mortgage Brokers<sup>10</sup>, Notaries<sup>11</sup>, Nurses<sup>12</sup>, Ophthalmic Dispensers<sup>13</sup>, Optometrists<sup>14</sup>, Pharmacists<sup>15</sup>, Private Investigators and Security Guards<sup>16</sup>, Professional Engineers<sup>17</sup>, Psychologists<sup>18</sup>, Public Accountants<sup>19</sup>, Radiological Technicians<sup>20</sup>, Surveyors<sup>21</sup>, Teachers<sup>22</sup>, and Veterinarians<sup>23</sup>.

TRADE UNION ORGANIZATION:

The Labour Relations Act<sup>24</sup> establishes a statutory framework for industrial relations in Ontario. The Act proclaims that every person is free to join a trade union or employers' organization of his choice, and to participate in its lawful activities.<sup>25</sup> Intimidation or coercion to compel any person to become or refrain from becoming a member of a union or of an employers' organization, or to refrain from

exercising any rights under the Act, is prohibited.<sup>26</sup> Once a union has been recognized or certified as representative of a particular bargaining unit, it has exclusive rights to represent all the employees in that unit as set forth in the Act. It also has a duty not to act in a manner that is arbitrary, discriminatory or in bad faith in the representation of any employees in the unit, whether or not they are members of the trade union.<sup>27</sup> The Labour Relations Act does not apply to domestics employed in a private home, persons employed in agriculture, hunting, trapping and horticulture; and public employees covered by specialized legislation for example police officers, fire-fighters and school teachers.<sup>28</sup>

#### ORGANIZATIONS OF PUBLIC EMPLOYEES

A series of specialized statutes accords recognition to associations of employees in the public sector and provides a structure guaranteeing their right to collective bargaining. The Crown Employees Collective Bargaining Act, 1972<sup>29</sup> recognizes that employee organizations of Crown employees can apply to the Ontario Public Service Labour Relations Tribunal for representation rights for an appropriate bargaining unit of employees. A recognized employee organization does not include an organization which receives, handles, or requires any money for activities carried on by



or on behalf of any political party, which supports or requires its members to support any political party, or which "discriminates against any employee because of age, sex, race, national origin, colour or religion."<sup>30</sup> The Police Act<sup>31</sup> prohibits members of a police force from joining a trade union, but recognizes that an association composed of a majority of officers of a single police force and having among its objectives, the improvement of conditions of service or remuneration of the members of that force, can engage in collective bargaining. The Fire Departments Act<sup>32</sup> specifies that where not less than 50 per cent of the full-time fire fighters in a fire department belong to a trade union, any request for bargaining on remuneration, pensions and working conditions must be made by the union. The School Boards and Teachers Collective Negotiations Act, 1975<sup>33</sup> accords explicit recognition to the five existing organizations of teachers, and specifies that any negotiations on behalf of teachers are to be conducted by these organizations, termed "branch affiliates", according to the Act. The Colleges Collective Bargaining Act, 1975<sup>34</sup> recognizes employee organizations formed for the purpose of regulating employer-employee relations under the Act on behalf of academic staff and support staff in colleges of applied arts and technology.

No recognition is accorded to organizations that discriminate against any employee because of age, sex, race, national origin, colour or religion.<sup>35</sup>

Article 22: Notes

<sup>1</sup>Architects Act, R.S.O. 1970, c.27

<sup>2</sup>Chiropody Act, R.S.O. 1970, c.70

<sup>3</sup>Dental Technicians Act, R.S.O. 1970, c.107

<sup>4</sup>Health Disciplines Act, 1974, S.O. 1974, c.47, Part II.

<sup>5</sup>Denture Therapists Act, 1974, S.O. 1974, c.34

<sup>6</sup>Health Disciplines Act, 1974, S.O. 1974, c.47, Part III

<sup>7</sup>Drugless Practitioners Act R.S.O. 1970, c.137

<sup>8</sup>The Funeral Services Act, S.O. 1976 (2nd Session) c.83

<sup>9</sup>Law Society Act, R.S.O. 1970, c.238 as amended S.O. 1973, c.49

<sup>10</sup>Mortgage Brokers Act, R.S.O. 1970, c.278 as amended S.O. 1971, vol. 2, c.50, s.59; S.O. 1972, c.1, s.45; S.O. 1973, c.103; S.O. 1974, c.28; S.O. 1975, c.28.

<sup>11</sup>Notaries Act, R.S.O. 1970, c.300.

<sup>12</sup>Health Disciplines Act, 1974, c.47, Part IV

<sup>13</sup>Ophthalmic Dispensers Act, R.S.O. 1970, c.334

<sup>14</sup>Health Disciplines Act, 1974, S.O. 1974, c.47, Part V

<sup>15</sup>Ibid, Part VI

<sup>16</sup>Private Investigators and Security Guards Act R.S.O. 1970, c.362; amended S.O. 1972, c.1, s. 98.

- <sup>17</sup> Professional Engineers Act R.S.O. 1970, c.366; amended S.O. 1972, c.45.
- <sup>18</sup> Psychologists Registration Act, R.S.O. 1970, c.372
- <sup>19</sup> The Public Accountancy Act R.S.O. 1970, c.373
- <sup>20</sup> Radiological Technicians Act, R.S.O. 1970, c.399
- <sup>21</sup> Surveyors Act, R.S.O. 1970, c.452
- <sup>22</sup> The Teaching Profession Act R.S.O. 1970, c.456; as amended by S.O. 1972, c.1, s.66
- <sup>23</sup> Veterinarians Act R.S.O. 1970, c.480
- <sup>24</sup> R.S.O. 1970, c.232 as amended by S.O. 1975, c.76 and S.O. 1977, c.31.
- <sup>25</sup> Ibid, s.3,4
- <sup>26</sup> Ibid, s.61.
- <sup>27</sup> Ibid. s.60
- <sup>28</sup> Ibid. s.2
- <sup>29</sup> S.O. 1972, c.67 as amended S.O. 1974, c.
- <sup>30</sup> Ibid., s.1(1)(h)
- <sup>31</sup> R.S.O. 1970, c.351 as amended by S.O. 1972, c.1, s.97; S.O. 1972, c.103; S.O. 1974, c.106.
- <sup>32</sup> R.S.O. 1970, c.169, s.5
- <sup>33</sup> S.O. 1975, c.72
- <sup>34</sup> S.O. 1975, c.74
- <sup>35</sup> Ibid., s.1(g)
- <sup>36</sup> R.S.O. 1970, c.376 as amended by S.O. 1971, vol. 2, c.50, s.72.

Article 23:

The Family Law Reform Act, 1978, S.O. 1978, declares in its preamble, the desirability of encouraging and strengthening the role of the family, the recognition of the equal position of spouses during the marriage and the recognition of mutual obligations and responsibilities upon the breakdown of the marriage. In particular, the legislation requires each spouse to support his/herself as well as the other, and recognizes the obligation of every parent to provide support for his or her child (ss. 15, 16). Each spouse is equally entitled to a right of possession in the matrimonial home (sec. 40). Marriage contracts, establishing the rights and obligations of each spouse, may be entered into (sec. 51(1)), but any provision purporting to limit the rights of a spouse in the matrimonial home is void (sec. 51(2)). The rights and obligations recognized by the Act apply during the marriage as well as upon its breakdown.

During marriage each spouse is free to dispose of his or her own property with the exception of the matrimonial home which requires the consent of both spouses. Upon the breakdown of a marriage each spouse has the right to apply for an equal division of the family assets which is that property ordinarily used and enjoyed by the family while living together. The court has a discretion to order a



greater share of the family assets be given to a spouse or to order a share of other property such as business assets if, having regard to certain statutory criteria, the court feels it would be fair to do so. There is also discretion to order that a share of a spouse's property be given to the children (sec. 3-14 inclusive).

The Marriage Act, 1977, S.O. 1977, c.42 requires the solemnization of a marriage under the authority of a licence issued in accordance with the Act or the publication of banns (sec. 4), and any person who is of the age of majority may obtain a licence or be married under the authority of publication of banns (sec. 5(1)).

A minor may not be married unless he/she is 16 years of age or more, and has the consent of both parents. (sec.5(2)).

The Age of Majority and Accountability Act, S.O. 1971, Vol. I, c.98 declares every person to have attained the age of majority when he/she attains the age of eighteen years (Sec. 1(1)).

Although there are no statutory provisions requiring consent of the spouses to a marriage it has been recognized in case law that marriage, as a form of contract, requires free consent, and failing that, it is liable to annulment.

Article 24

The Child Welfare Act, R.S.O. 1970, c.64, provides for the protection of all children within the province. Children's aid societies are established, inter alia, to protect children where necessary and to investigate allegations that children may be in need of protection (sec. 6(2) and (revised) in section 6(2) of the new Act). The protection provisions of the Act apply to all children, without discrimination.

The Vital Statistics Act, R.S.O. 1970, c. 483, requires the attending medical practitioner, or nurse to notify the Registrar General of all births within the Province (sec.5), and one of the parents must file a statement of birth with the registration division within thirty days of the birth (sec. 6). Upon receipt of the statement and within one year from the date of the birth, the division registrar, if satisfied as to the correctness and sufficiency of the information, must register the birth (sec. 9). Births not registered within a year after the birth may be registered by the Registrar General upon application (Sec. 10).

The statement of birth requires, inter alia, that the child be given a name. Where the birth of a child has been registered and the given name by which the child was registered has been changed or the child was registered without a given name, the Registrar General shall cause an alteration or addition to be made on the registration of the birth (sec. 13(1)).

The Age of Majority and Accountability Act, S.O. 1971, vol. 2 c.98 lowered the age of majority from twenty-one to eighteen years of age. Some statutes, however, specify capabilities of persons not yet having reached the age of majority. Children fourteen years or over, for example, must consent to a change of their name.<sup>1</sup> Children seven years or more must give written consent for an adoption order.<sup>2</sup> Infants sixteen years or more have capacity to consent to a blood test to determine parentage.<sup>3</sup> A minor who is a spouse has capacity to commence, conduct, and defend a proceeding under The Family Law Reform Act without intervention of a next friend or guardian ad litem,<sup>4</sup> and a minor who can contract marriage can, with approval, enter into a marriage contract or separation agreement.<sup>5</sup> "Adult" under The General Welfare Assistance Act is defined to mean a person sixteen years of age or over.<sup>6</sup> The Insurance Act provides that a minor of sixteen years has capacity to make an enforceable contract of insurance.<sup>7</sup> Patients or out-patients sixteen years of age or over, or married, can consent to surgical operations.<sup>8</sup> The Sale of Goods Act specifies that the capacity to buy and sell is regulated by the general law concerning capacity to contract and to transfer and acquire property, but where necessities are sold and delivered to a minor, he shall pay a reasonable price therefor.<sup>9</sup>

The Infants Act, R.S.O. 1970, c.222 as amended, by S.O. 1977, c.41 provides for court orders to determine custody of and access to children, and to supervise the control and disposition of an infant's property. The Surrogate court may appoint the guardian of the infant, but if the infant is of the age of fourteen years, no such appointment shall be made without his consent (s.16(1)).

Article 24: Notes

<sup>1</sup>The Change of Name Act, R.S.O. 1970, c.60 as amended S.O. 1972, c.44, s.10(1).

<sup>2</sup>The Child Welfare Act, R.S.O. 1970, c.64 as amended S.O. 1975, c.1, s.31(1), s.73(4).

<sup>3</sup>The Children's Law Reform Act, S.O. 1977, c.41, s.9(4)

<sup>4</sup>S.O. 1978, c.2, s.2(4).

<sup>5</sup>Ibid., s.54(2)

<sup>6</sup>R.S.O. 1970, Reg. 303 s.1(1)(a).

<sup>7</sup>R.S.O. 1970, c.224 as amended S.O. 1972, c.66, s.176.

<sup>8</sup>Reg. 100 1974 under The Public Hospitals Act, R.S.O. 1970, c.378, s.49

<sup>9</sup>Sale of Goods Act, R.S.O. 1970, c.421, s.3(1).



Article 25

Participation in elections for public office is subject to certain statutory limitations. Voting in provincial elections is restricted to Canadian citizens and other British subjects.<sup>1</sup> Members of the Legislative Assembly must be British subjects by birth or naturalization, and resident in Ontario.<sup>2</sup> Senators, members of the House of Commons, and certain Crown employees are disqualified from sitting in the provincial assembly.<sup>3</sup> Electors for municipal council and candidates for municipal office must be British subjects by birth or naturalization.<sup>4</sup> Persons who are prisoners, mental patients and mental incompetents on the polling day are disqualified from voting.<sup>5</sup> Public school electors are also required to be Canadian citizens or British subjects.<sup>6</sup>

The Public Officers Act, R.S.O. 1970, c.382, s.1 specifies that public officers must be British subjects by birth or naturalization, and that other persons may be employed for a temporary purpose when such employment is in the public interest. This preference in the public service is an express exemption under The Ontario Human Rights Code, R.S.O. 1970, c.318 as amended, s.6.<sup>7</sup> Regulation 749, s.2 under The Public Service Act R.S.O. 1970, c.386 provides that persons honourably discharged or retired from active military

service in the two World Wars and the Korean War are to be given preference where qualifications are otherwise equal.

The Legislative Assembly Act provides that the duration of every Legislature shall be no longer than five years and that sessions shall be held yearly (ss. 3,4).

The Representation Act, R.S.O. 1970, c.413 divides Ontario into electoral districts and states the number of members which shall comprise the Legislative Assembly. The Election Act R.S.O. 1970, c.142 provides for free and open elections. Secrecy is preserved by Part V of the Act. Corrupt practices are forbidden and penalties attached thereto under Part VII.

The Municipal Act, supra, determines the composition and election of municipal councils. The Municipal Elections Act, S.O. 1972, c.95, governs elections for municipal councils, elected trusteeships and boards, and referendums on approvals of by-laws and other matters required to be submitted to the electors. (s.2). The term of office is for two years (s.10). Secrecy is assured by private voting compartments (s.44(3)), and penalties are imposed for corrupt practices (ss. 94-116).

#### Article 25: Notes

<sup>1</sup>The Election Act, R.S.O. 1970, c.142, s.9

<sup>2</sup>The Legislative Assembly Act, R.S.O. 1970, c.240, s.6

<sup>3</sup>Ibid; ss.7,8

<sup>4</sup>The Municipal Act, R.S.O. 1970, c.284 as amended, s.38(1)

<sup>5</sup>Ibid., s.52(2)

<sup>6</sup>Education Amendment Act, S.O. 1976, c.50, s.11

<sup>7</sup>The Code also omits "nationality" as a prohibited ground of discrimination with respect to membership in self-governing professions (eg. The Law Society of Upper Canada). (s.4a(2)).

#### Article 26

The protections accorded by the Human Rights Code have been discussed with reference to Article 2.

Equal access to the courts is facilitated by The Legal Aid Act<sup>1</sup> which empowers the Law Society of Upper Canada to establish and administer a legal aid plan. Under the plan, legal aid certificates are available for proceedings in the Supreme Court, County or district court, surrogate court, Exchequer Court, and where the applicant is charged with an indictable offence or where an application is made for preventive detention.<sup>2</sup> A certificate may be issued at the discretion of the area director for summary conviction proceedings, for proceedings in provincial court (family division), small claims court, before a quasi-judicial or administrative board,

in bankruptcy, for contempt of court, or for drawing documents, negotiating settlements, and other summary advice.<sup>3</sup> Certificates may be granted for appeals with the approval of the area legal aid committee.<sup>4</sup> Whether a certificate is granted depends on these statutory criteria, and on the report of an assessment officer who considers the income, disposable capital, indebtedness, needs of dependents, and such other factors as he considers relevant to determine whether the applicant can pay no part, some part or the whole of the cost of the legal aid applied for.<sup>5</sup> Once a legal aid certificate has been granted, the recipient can engage the lawyer of his choice to take his case.

The legal aid plan also has provisions for duty counsel, for student legal aid societies, and for community legal clinics.

Article 26: Notes

<sup>1</sup>R.S.O. 1970, c.239 amended S.O. 1973, c.50

<sup>2</sup>Ibid., s.12

<sup>3</sup>Ibid., s.13

<sup>4</sup>Ibid., s.14

<sup>5</sup>Ibid., s.16(3)



Article 27

MULTICULTURAL POLICY:

The Ministry of Culture and Recreation Act, 1974

specifies that it is the function of the Ministry to advance and encourage responsible citizenship through the process of cultural and recreational developing, including "preserving and maintaining the cultural heritage of residents of Ontario with full recognition of their diverse traditions and backgrounds".<sup>1</sup> In May 1977, the Ontario government announced a multicultural policy which includes the right of individuals and groups to maintain and develop their ethnocultural heritage, including language.<sup>2</sup> These mandates provide the framework for many government programs, including specific activities of the Ministry of Education and the financial and consultative assistance provided by the Citizenship and Multiculturalism Division of the Ministry of Culture and Recreation.

Article 27: Notes

<sup>1</sup>S.O. 1974, c.120, s.6(1)(a).

<sup>2</sup>Statement of Premier William Davis, Queen's Park, May 4, 1977.

8. PRINCE EDWARD ISLAND\*

The Province of Prince Edward Island, in consenting to Canada's accession to the Covenant, has deemed applicable Article 50 and undertakes to report upon the implementation in the Province of those protections and guarantees under the Covenant.

Article 1

The Province of Prince Edward Island subscribes to the principles as stated in this article and allows its people to freely determine their own political status and pursue their own economic, social and cultural goals. The Election Act, R.S.P.E.I. 1974, Cap. E-1, preserves the right of individuals of the age of majority who satisfy the citizenship and residency requirements the right to vote in a democratic election. Other than this particular Act there is no specific legislation in the Province governing the right to self-determination. There is no specific legislation relating to native peoples or minority groups.

Article 2

The Human Rights Act, Stats. P.E.I. 1975, Cap. 72, which became law in the Province on September 11, 1976, states in its

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\* Report prepared by the Government of Prince Edward Island.

preamble "... it is recognized in Prince Edward Island as a fundamental principle that all persons are equal in dignity and human rights without regard to race, religion, creed, colour, sex, marital status or ethnic or national origin;".

Additionally, within the legislation discrimination with respect to political belief is prohibited and in the area of employment discrimination on the basis of age and physical handicap is also prohibited.

The prohibition against discrimination on the grounds as set out in the legislation, applies directly to the following areas: accommodations, services and facilities to which members of the public have access; property sales; employment; pay in employment; employees' organizations; professional, business or trade association; persons or agencies carrying out a public function; or, advertising, publications, or displays.

The Human Rights Act provides for the establishment of a Human Rights Commission which is a corporate body and to which complaints of a violation of the Act may be directed. The Commission is authorized to investigate the complaint and to obtain any information that may be necessary to further the particular investigation or process. The Commission is to

attempt to arrive at a settlement between the complainant and respondent and the failure to reach a settlement may result in a ministerial board of inquiry. The result of the inquiry could be an order directed to the respondent to comply and failure to do so could result in prosecution ending in a fine and possible imprisonment.

Section 33 of the Human Rights Act states "This Act binds the Crown in right of Prince Edward Island and every servant and agent of the Crown."

Additionally, S. 1(2) of the Human Rights Act reads:

"This Act shall, at the expiration of three years from the date of this Act coming into force, be deemed to prevail over all other laws of this province and such laws shall be read as being subject to this Act; between the date of this Act coming into force and the expiration of the said three-year period it is the express intention of the legislature that inconsistencies between the statutes and the regulations of this province and this Act be removed."

This particular subsection would require that by September of 1979, all legislation and all regulations made pursuant to such legislation within the Province be amended to eliminate all inconsistencies between such legislation and the expressed intention



and application of the Human Rights Act. A review of all legislation within the Province has already been initiated through each government department that should result in all discriminatory references being eliminated from the laws of the Province.

### Article 3

The Human Rights Act of Prince Edward Island does not purport to deal with or affect the ordinary civil and political rights that are preserved by Statute or at common law. Accordingly, reference must be made to other legislation in the Province. Generally, men and women equally enjoy the rights protected under the Covenant and protected by the provincial legislation, and the Province has been working toward eliminating any possible sexual inequality that could exist within the laws of the Province.

In 1974, the provincial government created as an advisory body to the government the Advisory Council on the Status of Women. This particular body, which does not have statutory existence but has been created by a Minute-in-Council, has continually examined the present and proposed legislation of the Province in an attempt to establish sexual equality in

the written law. The public and private position taken by the Advisory Council indicates that the present system has been extremely effective in achieving the aims of sexual equality. This report on Article 3 of the Covenant will restrict itself to exceptions to the general rule and any proposals that exist to eliminate such exceptions.

The Jury Act, R.S.P.E.I. 1974, Cap. J-5, allows for women to sit on juries but grants them a special exemption if it is so requested by the woman. That section is patently discriminatory against men and should be eliminated. The Bailable Proceedings Act, R.S.P.E.I. 1974, Cap. B-1, provides that a married woman is not liable for arrest for nonpayment of debt but it does appear to allow a man to be arrested for the same thing in the circumstances allowed under the Act. Other distinctions exist more obviously in the areas of family law.

The Children's Act, R.S.P.E.I. 1974, Cap. C-6, covers the areas of children of unmarried parents, deserted wives and children, parents' maintenance, and custody of children. The sections relating to deserted wives and children provide only for an action on the part of a deserted wife and not on the part of a deserted husband. It appears therefore, that only

a husband can be required to make payments to a deserted wife and the reverse is not enforceable in this Province. There is no definition of a marriage relationship which includes one where two persons have lived together in a common law relationship for a minimum period of time. In the sections relating to custody only the father of a child can be ordered to make maintenance payments though custody may be granted to either the father or the mother. After lengthy deliberations and redrafts a Family Law Reform Act, S.P.E.I. 1978, C-6 has been adopted. The Act includes within its legislation all aspects of family law under one piece of legislation. The Act has been drafted taking into consideration the necessity of equalizing the legislation as it affects both sexes. The Act was proclaimed by the Lieutenant Governor in Council to come into force on December 31, 1978.

An Act Respecting the Solemnization of Marriage, R.S.P.E.I. 1974, Cap. M-5 establishes age 16 as the minimum age of marriage but makes an exception for a female shown to be pregnant or who is the mother of a living child. The father of a living child is not given such protection.

The Human Rights Act, of course, prohibits discrimination in the areas to which the Act applies on the grounds of sex among others.

Article 4

In the Province of Prince Edward Island, the Emergency Measures Act, R.S.P.E.I. 1974, Cap. E-5, makes provision for the protection of life and property, the preservation of the peace and for meeting other emergencies in case of enemy attack, sabotage, espionage or other hostile action. It also makes provision for aid in cases of emergency in any community or municipality caused by fire or the elements and allows for the Lieutenant-Governor-in-Council to declare a state of emergency as existing. The Act allows for the coordination of emergency measures between the various communities and municipalities within the Province and the Government of Canada if necessary. There does not appear to be anything under the Act allowing for discrimination to operate solely on the grounds of race, colour, sex, language, religion or social origin. The legislation does not appear to conflict with Article 4 of the Covenant.

Article 6

The laws of the Parliament of Canada protect the inherent right to life.



The Province of Prince Edward Island has enacted the Health Services Payment Act, R.S.P.E.I. 1974, Cap. H-2, which establishes a plan of health care for the people of the Province of Prince Edward Island and qualifies for financial assistance under the Medical Care Act (Canada), R.S.C. 1970, Cap. M-8, and provides for the payment of medical attention required by the residents of the Province of Prince Edward Island. Complementary legislation relating to hospitals and a Hospital Services Commission to administer the Health Services Plan have been enacted in this Province.

Legislation relating to the right to life of newborn or to-be-born infants is governed by the law of Canada.

Legislation exists within the Province for the protection of young children under the Children's Protection Act, R.S.P.E.I. 1974, Cap. C-7 which provides for the apprehension by the Director of Child Welfare of neglected children within the Province.

Legislation also exists to govern health conditions within the Province under the Public Health Act, R.S.P.E.I. 1974, Cap. P.-29, by providing for the prevention of the spread of disease.

Legislation such as the Welfare Assistance Act, R.S.P.E.I. 1974, Cap. W-4, is further provincial legislation establishing a welfare scheme which directly affects and protects life. Other legislation directed specifically to the health of the people of the Province is here reported such as, An Act Respecting Mental Health, R.S.P.E.I. 1974, Cap. M-9, which provides for the voluntary and involuntary committal of persons who are mentally ill, providing also for yearly review and appeal procedures. The Venereal Diseases Prevention Act, R.S.P.E.I. 1974, Cap. V-2 is a further legislative attempt to stop the spread of communicable diseases which could seriously affect the life of members of the community and the newborn. The Addiction Foundation of P.E.I. Act, Stats. P.E.I. 1975, C-38, is another aspect of health services legislation directed toward the assistance of those members of the community suffering from alcohol and drug abuse problems and providing for the treatment and care of alcoholics and drug abusers.

Legislation also exists to assist further physically disabled persons within the Province and to provide for their better welfare through such Acts as the Rehabilitation of Disabled Persons Act, R.S.P.E.I. 1974, Cap.R-12; the Blind Persons Act, R.S.P.E.I. 1974 Cap. B-4; the Blind Workmen's Compensation Act, R.S.P.E.I. 1974, Cap. B-5; an Act Respecting Allowances for Disabled Persons, R.S.P.E.I. 1974, Cap. D-11; and the Worker's Compensation Act, R.S.P.E.I. 1974, Cap. W-10.

These particular statutes provide for financial assistance to those persons in need because of physical disability or injury and providing for an administrative body to oversee the administration of the particular Acts.

There is no legislation which exists in the Province affording protection to a doctor in cases of emergency to offer medical services to a person without fear of civil action. The common law operable in the Province of Prince Edward Island appears to indicate that the doctor is required to provide, if he volunteers his services, a proper standard of care and that if he worsens the condition of the person or he does work for which he is not competent, he could be liable to civil action. If a doctor is requested to give emergency service or volunteers such service then he must exercise all standards of reasonable care that would ordinarily be provided in any other situation. A doctor has the right to refuse to give emergency medical aid and there are no lawful consequences for such refusal.

#### Article 7

No legislation exists in the Province relating to this article; however, remedies would be available to any individual subjected to such treatment by the law of Canada relating to criminal law and resort to the civil procedures in this Province

based on the developed common law. Such actions extend to and are available to an individual person in this Province in respect of improper treatment by the police, by correctional officers in penal institutions and other officers of the Crown or of any municipality. Also, Regulations made pursuant to the Jails Act, R.S.P.E.I. 1974, Cap. J-1, have established the appropriate controls and guidelines for behavior within the jails by prisoners and jail guards. Additionally, the Public Inquiries Act, R.S.P.E.I. 1974, Cap. P-30, provides that the Lieutenant-Governor-in-Council may cause an inquiry to be made into any matter connected with the good government of this Province or the conduct of any part of the public business within the Province and such has been interpreted in the past to allow an inquiry into the operation of the jails and the behavior of the jail guards. Indeed, such an inquiry was held in 1976.

#### Article 8

The law of the Province of Prince Edward Island would comply with the requirements of Article 8.

In emergency situations, declared pursuant to the Emergency Measures Act above referred to, and in those situations where a person is imprisoned in jail, forced service or hard labour is a possible consequence but not of the type precluded under Article 8.



Article 9

The law of Canada as it affects the liberty and security of the person and the right not to be subjected to arbitrary arrest or detention is applicable in the Province of Prince Edward Island. There is no additional provincial legislation which makes it mandatory that the person arrested be informed at the time of the arrest of the reasons for his arrest. The person has the right to be informed of the reasons for his arrest and of the charges against him.

Under the Summary Proceedings Act, Stats. P.E.I. 1977, Cap. 40, it provides that the provisions of the Criminal Code (Canada) R.S.C. 1970, Cap. C-34 as amended from time to time, including provisions relating to appeals applicable to offences punishable on summary conviction apply mutatis mutandis to proceedings to which the Act applies, that being, summary proceedings pursuant to any Act of the Legislature of the Province or a Regulation, By-law or other instrument having the force of law made under the authority of such an Act.

In addition to the habeas corpus proceedings under the laws of Canada, the Habeas Corpus and Certiorari Act, R.S.P.E.I. 1974, Cap. H-1, provides for an application to be made to a

Judge of the Supreme Court by any person or on behalf of any person confined in a jail or prison to determine whether or not such imprisonment is lawful. A judge can order the immediate release of the person unlawfully detained.

Any other remedy relating to false imprisonment or arrest is available by way of civil proceedings on the basis of false imprisonment according to common law procedures. There is no statutory right to compensation for a person unlawfully arrested or detained and such a person is dependent upon the award made by a Judge of the Supreme Court in a civil action.

#### Article 10

In the Province of Prince Edward Island, a very, very small percentage of accused persons are subjected to a pre-trial incarceration. Those accused persons who are incarcerated pending trial are so incarcerated by order of the Court for the protection of and in the interests of the public. At present, there is no distinction made between accused persons remanded prior to their trial and convicted persons imprisoned in the jail. There is no segregation of these persons and no distinctions made in respect of treatment. New jail facilities are soon to be constructed, most probably in 1978, in the Province and such new facilities will have a separate wing specifically for accused persons awaiting trial.

In Prince Edward Island, juvenile persons are not held in custody pending trial except in extremely rare circumstances. Such juveniles and all other juveniles are brought to trial as speedily as possible. Juvenile persons imprisoned in the province are presently housed in the same facility as the adult prisoners but in a separate area of the same building. As completely as possible, juvenile persons incarcerated in penal institutions in this Province are prevented from associating with the adult prisoner population. The new facility to be constructed in this Province has a separate area for juveniles both accused and convicted.

#### Article 11

The Province of Prince Edward Island has remaining on its statute book the Bailable Proceedings Act, R.S.P.E.I. 1974, Cap. B-1. This particular Act abolishes arrest and imprisonment for debt and arrest or imprisonment by process of contempt for nonpayment of any sum of money, costs, charges or expenses payable by an Order of the Supreme Court. However, the Act preserves the right to arrest a debtor who is about to leave the Province of Prince Edward Island without paying his debt. Such person can be brought before the Court and ordered imprisoned or released on particular sureties pending the final determination of the debt. Such arrest is considered to be

the initiation of an action and it is within the Court's jurisdiction to deal with the matter from that point. The only possibility for arrest, then, of a debtor is of that person who can be considered to be an absconding debtor. There is no other imprisonment possible of anyone in the Province merely on the grounds of the inability to fulfill a contractual obligation.

#### Article 12

There is no legislation in the Province which restricts in any way one's freedom of movement throughout the Province which would appear to conflict with this Article.

#### Article 13

Expulsion of aliens from the territory of Canada is a matter which falls within the jurisdiction of the federal Government. Therefore, there is no provincial legislation on this matter.

#### Article 14

In the Province of Prince Edward Island, all persons are considered equal before the Courts and are given equal opportunity to initiate the protection and the enforcement of their rights before a fair and impartial public tribunal.



In respect of legal assistance, there is no legal aid scheme in respect of civil matters in this Province, but there is established the Public Defender legal aid system to provide free legal services for indigent persons accused of criminal offences.

The appointment of Supreme Court Judges is governed by the law of Canada.

The appointment of Provincial Court Judges is governed by the Provincial Court Act, R.S.P.E.I. 1974, Cap. P-24 as amended by Stats. P.E.I. 1975, Cap. 78 and Stats. P.E.I. 1977, Cap. 32. Such legislation provides that the Judges be appointed by the Lieutenant-Governor-in-Council and the appointees be persons who have membership in good standing in the Law Society of Prince Edward and have been practising at the bar for five years immediately preceding the appointment. The appointment is at the pleasure of the Lieutenant-Governor-in-Council and the particular Judge may be removed by order of the Lieutenant-Governor-in-Council.

Any arrest for contraventions of provincial legislation containing penal **sanctions**, is governed by the Summary Proceedings Act referred to above.

There is no legislation guaranteeing the right to sue by way of civil remedy for failure to receive the rights guaranteed

by this Article. Common law remedies by way of civil action are available but there is no compensation for imprisonment, for example, where the conviction is subsequently reversed on appeal or a pardon is received. Only where such action has been unlawful is there a possible remedy resulting in compensation.

Further protection is accorded an individual in respect of the right to appeal decisions, decrees, judgments, orders or convictions of any of the lower Court Judges to the Supreme Court by virtue of the Appeals Act, R.S.P.E.I. 1974, Cap. A-11.

The establishment of the Court systems of Prince Edward Island is preserved by the Supreme Court Reorganization Act, Stats. P.E.I. 1975, Cap. 27, the Judicature Act, R.S.P.E.I. 1974, Cap. J-3, and by the Rules of Procedure established by the Supreme Court pursuant to the Judicature Act.

#### Article 15

Section 31.(2)(e) of the Interpretation Act, R.S.P.E.I. 1974, c. I-6 provides that:

"Where an Act or enactment is repealed in whole or in part or a regulation revoked in whole or in part and other provisions are substituted therefor...

- (e) if any penalty, forfeiture or punishment is reduced or mitigated by any of the provisions so substituted, the penalty, forfeiture or punishment if imposed or adjudged after the repeal or revocation, shall be reduced or mitigated accordingly."

#### Article 16

The law of Prince Edward Island complies with Article 16 of the Covenant.

#### Article 17

In the Province of Prince Edward Island an individual is protected from unlawful attacks on his honour and reputation by the Defamation Act, R.S.P.E.I. 1974, Cap. D-3, which provides for a civil remedy to the Supreme Court for libel or slander resulting in an award of damages by the Court.

Documents constituting public record are not protected by way of privacy principles; however, business records of private institutions are so protected. Medical records are available only to the individual to whom they apply or to that person's authorized representative.

In the penal institutions of Prince Edward Island, the ingoing and outgoing mail of an inmate is opened to examination by the Superintendents of the jail except for mail coming from

or directed specifically to the Department of Justice and Attorney General. Such mail is not open to inspection and can freely pass.

#### Article 18

Freedoms of thought, conscience and religion are recognized in common law in the Province of Prince Edward Island.

The Human Rights Act referred to above protects freedom of religion and creed in the areas covered under the Act.

#### Article 19

The rights guaranteed in Article 19 are inherently a part of the laws of Prince Edward Island. An examination of legislation of Prince Edward Island indicates that these principles underlie all of this province's legislation.

#### Article 20

There is no provincial legislation which is directed specifically to the prohibition of any propaganda for war. The only provincial legislation operable relating to incitement to



discrimination on the basis of national, racial or religious hatred is that which would exist by operation of the Human Rights Act.

Any other legislation operable in the Province relating to these two matters would be that of the law of Canada.

#### Article 21

There is no provincial legislation directed specifically to the prevention of peaceful assembly or public gathering. Any legislation that does affect the right of peaceful assembly in a restrictive way is solely for the protection of public health or order and the protection of rights and freedoms of others.

#### Article 22

All persons in the Province of Prince Edward Island have the right to associate with persons of their choice and such right is protected by the Human Rights Act, Stats. P.E.I. 1975, Cap. 72, S. 13, which reads:

"No person shall discriminate against any individual or class of individuals in any manner prescribed by this Act because of the race, religion, creed, color, sex, marital status, ethnic or national origin, or political belief as registered under Section 24 of the Election Act, R.S.P.E.I. 1974, Cap. E-1 or any person or persons with whom the individual or class of individuals associates."

Also the Labour Act, R.S.P.E.I., 1974, Cap. L-1, guarantees the right to every employee to be a member of a trade union and to participate in the lawful activities of such a union. All persons are guaranteed the right to associate in any professional, business or trade association or employees' organizations and discrimination in such organizations is prohibited by S.8 and S.9 of the Human Rights Act.

#### Article 23

Legislation relating to marriage in the Province is governed by an Act Respecting the Solemnization of Marriage above referred to. The legislation provides for those persons who may solemnize a marriage, the requirements for receiving a licence to marriage, age limitation and the necessary consents required by the parents or guardians of persons under age.

The right to own property is recognized by the laws of the Province of Prince Edward Island and special reference is made to the right of married women to retain property in their own name pursuant to the Married Women's Property Act,\* R.S.P.E.I. 1974, Cap. M-6. This Act establishes the same legal capacity of married women to deal with property as men have by law. Additionally, by the Dower Act,\* R.S.P.E.I. 1974. Cap. D-17, is given an additional interest to married women in the property of their deceased husband. By the operation of this Act the

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\* The Married Women's Property Act and the Dower Act were repealed by the entry into force of the Family Law Reform Act, S.P.E.I. 1978, c-6, on December 31, 1978.

wife owns an undivided one-third interest in all of the real estate of which her husband dies seized. By operation of the common law, an estate by curtesy operates in favour of a married man in the real property of his wife. Though an estate by curtesy is still the law in the Province of Prince Edward Island, it has not been given any real recognition in practice for many years.

The Supreme Court of the Province has authority over property in a marriage dissolution or marriage breakdown by virtue of S. 21 of the Married Women's Property Act, referred to above, and the Real Property Act, R.S.P.E.I. 1974, Cap. R-4, which legislation allows the Court certain discretion in determining the interest of both of the marriage partners in the property.

Also in this Province is an Act entitled the Family Allowances Act, R.S.P.E.I. 1974, Cap. F-2, which is an example of the provincial-federal cost sharing program to give financial assistance to families with more than four children.

#### Article 24

The Province has passed legislation entitled the Vital Statistics Act, R.S.P.E.I. 1974, Cap. V-6, which governs the registration of birth of all children in the Province together

with the name of the mother and the child and providing a name for the child. This Act also provides a means by which children born out of wedlock can be registered as legitimate if their parents later marry. It also provides for newborn children found deserted to be reported to the Registrar. The legislation also applies to marriages, adoptions, deaths, changes of name and the appropriate regulation and administrative aspects regarding same. The legislation also provides for prosecutions for contraventions of the legislation.

The Children's Act, R.S.P.E.I. 1974, Cap. C-6 provides that if any child is born out of lawful wedlock, he will be deemed to be and have been legitimate from the time of birth if his parents later marry. The Act also provides that in case of children born out of wedlock, maintenance can be obtained from the putative father and, if ordered by the judge, the mother. Other topics dealt with by the Children's Act are maintenance for deserted wives and children, maintenance of parents by children and custody of children.

Children's protection legislation also exists in the Province and has been referred to earlier in this report.

There is also legislation respecting the minimum age of employment (Minimum Age of Employment Act, R.S.P.E.I. 1974, Cap. M-11); for the relief of dependents of deceased persons (Dependents



of Deceased Persons Relief Act, R.S.P.E.I. 1974, Cap. D-6); establishing the age of adulthood (Age of Majority Act R.S.P.E.I. 1974, Cap. A-3); and for the enforcement of custody orders from outside this Province (Extra-Provincial Custody Orders Enforcement Act, Stats. P.E.I. 1975, Cap. 68).

Legislation also exists respecting the adoption of children by suitable persons.

#### Article 25

All residents of the Province are permitted to freely take part in the conduct of public affairs, either directly or through freely chosen representatives. However, there are some restrictions contained within that legislation which pertains to municipal and provincial elections which require the establishment of residency prerequisites, Canadian citizenship and in some municipal cases, property ownership within the municipality.

The Province has established an Act Respecting the Civil Service, R.S.P.E.I. 1974, Cap. C-9, which regulates by law entry to and activity within the civil service. Entry to the civil service is by competitive examination generally and such examination preserves those rights guaranteed under Article 2 of this Covenant.

In addition, the Human Rights Act provides that there shall be no discrimination on the grounds of political belief in this Province.

Article 26

Reference can be made to the Human Rights Act as well as to comments made on the legislation earlier in this report.

Article 27

There is no legislation in the Province which in any way restricts the rights of minorities living within the Province.

9. QUEBEC\*

1. Ratification by Québec

The federal-provincial agreement on means of implementing the International Covenants within Canada was reached in December 1975 by the ministers responsible for human rights. On April 21, 1976, after that agreement was signed, Québec passed an Order in Council to ratify the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and the Optional Protocol to the latter Covenant.

2. Québec's spokesman

After meetings with representatives of the Ministère des Affaires intergouvernementales, which under the terms of the Intergovernmental Affairs Department Act is responsible for "the implementation... of treaties and agreements involving... Québec" and representatives of the Ministère de la Justice, the President of the Commission des droits de la personne was recognized as Québec's spokesman on all fundamental questions dealing with the International Covenants on Human Rights.

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\* Report prepared by the Government of Québec.

3. The Québec Commission des droits de la personne

Québec's Commission des droits de la personne was established when the Charter of Human Rights and Freedoms (S.Q. 1975, c.6) was assented to on June 27, 1975. This Commission, which has its seat in Montréal and an office in Québec City, has been in operation since June, 1976.

The functions of the Commission are to promote, by every appropriate measure, the principles enunciated in the Charter, and to exercise the powers and carry out the duties prescribed therein (s. 66). In particular it must:

- "67 (a) receive complaints and make investigations regarding matters within its competence by virtue of section 69;
- (b) establish a programme of information and education designed to promote an understanding and acceptance of the objects and provisions of this Charter;
- (c) direct and encourage research and publications relating to fundamental rights and freedoms;
- (d) make an analysis of any Québec statutes existing prior to this Charter that may be inconsistent with it and make the appropriate recommendations to the Government;



- (e) receive the suggestions, recommendations and requests made to it concerning human rights and freedoms, study them and make the appropriate recommendations to the Government; and
- (f) cooperate with any Québec or outside organization dedicated to the promotion of human rights and freedoms."

Section 69 recognizes the right of any person who has reason to believe that he is or has been the victim of illegal discrimination, or -- in the case of an aged, infirm, mentally defective or mentally ill person -- that he is being in any way exploited, to request the Commission to make an investigation. Specific organizations may also request an investigation in the name of an injured party, with that party's consent (s.70). The Commission can also make an investigation on its own initiative (s. 73).

For purposes of investigation, the members and personnel of the Commission have all the powers and immunities of commissioners appointed under the Public Inquiry Commission Act (S.R.Q. 1964, c.11).

Québec's Charter of Human Rights and Freedoms forbids any "distinction, exclusion or preference based on race, colour, sex, sexual orientation, civil status, religion, political convictions, language, ethnic or national origin or social condition" (s.10). The areas covered by these prohibitions are advertising, the drawing up of juridical acts, housing, access to public places, employment, employers' or employees' associations, employment bureaux, and equal pay for equivalent work.

The Charter also affirms the fundamental rights: the right to life, and the right to assistance of every human being whose life is in danger, and the fundamental freedoms: of conscience, religion, opinion, expression, peaceful assembly, and association. It also recognizes that every person has a right to the safeguard of his dignity, honour and reputation, and to respect for his private life, and to the free disposition of his property; that a person's home is inviolable; and that confidential information must not be disclosed. These rights are supplemented by political, judicial, economic and social rights. Finally the Charter binds the Crown (s.54) and, in accordance with Canadian constitutional law, it affects only those matters that come under the legislative authority of Québec (s.55).

4. Comments on the implementation of the International Covenant on Civil and Political Rights

Within Canada's federal framework Québec has participated in two inter-provincial conferences and one federal-provincial meeting, where an agreement was reached on means of implementing the International Covenants.

Responsibility for these means and their implementation was entrusted to a permanent federal-provincial committee made up of representatives of the eleven governments within Canada. The representatives had several meetings, and have agreed to give priority to the study and analysis of the International Covenant on Civil and Political Rights.

The analysis carried out by the Commission des droits de la personne shows that in general, Québec's human rights legislation reflects the rights recognized by the International Covenant on Civil and Political Rights. Occasionally the Québec legislation even offers a more solid guarantee of these rights, while at the same time protecting "the enjoyment or exercise of any human right or freedom not enumerated (in the Charter)" (Charter. s. 50).

As a demonstration, Québec would like to comment on the following articles in the International Covenant:

Article 2

Québec law complies with this article.

Article 2, paragraphs 2 and 3

It has been asked whether the application of this paragraph in Québec does not perhaps entail the risk of setting up two categories of fundamental rights, some that would have to be recognized "without distinction of any kind" and others that would be protected only against discrimination on the grounds listed in s. 10 of the Charter of Human Rights and Freedoms (see above, p. 430).

Analysis has proved that there is no danger of this categorization. It is clear that the types of discrimination forbidden under section 10 of the Charter apply only to the rights affirmed in sections 11 to 19. Under the terms of the Preamble, all other rights recognized by the Charter must be considered intrinsic to a human being; none of these rights is less important than another, and all receive equal protection in the law. These rights are in accordance with those discussed in the International Covenant in question, and consequently their respect under Québec law is assured.



Article 2, paragraphs 2 and 3

Possible recourse under the Charter has already been examined.<sup>1</sup> After its investigation, the Commission must try to induce the parties to settle their dispute. If this fails, the Commission may recommend the cessation of the objectionable act, the performance of some other act, or the payment of an indemnity within a set time-period. If its recommendation is not followed to the satisfaction of the Commission within the time allowed, the Commission, with the written consent of the victim, may apply to the tribunal for an injunction, for payment to the victim of the recommended indemnity, or -- in the case of unlawful and intentional interference -- for payment of exemplary damages as well. If the victim prefers, he may exercise this recourse himself. Other forms of recourse are available, as will be made clear in these comments.

Article 3

In 1975, the Québec legislature passed the Charter of Human Rights and Freedoms (SQ.1975, c.6), s 10 of which

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1. See above: "3- The Québec Commission des droits de la personne

states that "every person has a right to full and equal recognition and exercise of his human rights and freedoms, without distinction, exclusion or preference based on ... sex ...(or) civil status...". These specific prohibitions apply to advertising, the drawing up of all juridical acts, housing, access to public places, hiring, equality of pay, associations of employers or employees, and employment bureaus. As mentioned above, all other rights and freedoms are recognized as "intrinsic to the human being", without any restriction whatsoever.

The Québec Civil Code recognizes the right to marriage from the age of fourteen years for men and twelve years for women (Art. 115). Free consent is necessary in order for a marriage to exist (Art. 116).

Article 177 of the Civil Code specifies that during the marriage "the legal capacity of each of the consorts is not diminished by marriage. Only their powers can be limited by the matrimonial regime".

In 1977, title eight of chapter three of the Civil Code was amended to replace the concept of "paternal authority" with that of "parental authority". Under the new Article 244, "the father and mother exercise parental authority together, unless this Code provides otherwise".

Article 4

Section 79 of the Québec Police Act (SQ 1963, c.17)

states that:

"The Lieutenant-Governor in Council, if he is of the opinion that public health or safety is endangered in the whole or any part of the territory of the Province of Québec, may order that the Director General of the Police Force or any other person designated by him assumes, under the authority of the Attorney-General and for a period indicated by him but which shall not exceed thirty days at a time, the command and direction of the Police Force and of all municipal police forces that he mentions, and of their members."

The same Act provides that the Attorney-General "shall lay before the Legislative Assembly every order in council adopted under section 79 on or before the third day on which the Assembly sits, after the adoption of the order" (S.81, first paragraph). At the request of a member the revocation of such order may be discussed by precedence, interrupting any current debate (s. 81, second paragraph).

It should be noted, however, that this provision does not authorize any special power or any derogation from the law, since the Director General of the Police Force or the person designated in the order in council has only "the necessary authority to enforce the laws of the Province of Québec and the by-laws of all municipalities whose police forces are contemplated in the . . . order in council" (s. 80).

#### Article 5

This article of the Covenant corresponds to ss 50, 51 and 52 of the Charter of Human Rights and Freedoms.

"50. The Charter shall not be so interpreted as to suppress or limit the enjoyment or exercise of any human right or freedom not enumerated herein.

51. The Charter shall not be so interpreted as to extend, limit or amend the scope of a provision of law except to the extent provided in section 52.



52. Sections 9 to 38 prevail over any provision of any subsequent act which may be inconsistent therewith unless such act expressly states that it applies despite the Charter."

#### Article 6

Section 1 of the Charter of Human Rights and Freedoms provides that:

- "1. Every human being has a right to life, and to personal security, inviolability and freedom."

The question of the death penalty comes under federal jurisdiction.

#### Article 7

The rights recognized by this article are protected by various sections of Québec's Charter of Human Rights and Freedoms, as well as by the Civil Code and the Police Act (S.Q. 1968, c. 17). For example, the first section of the Charter recognizes not only the right to life, but also the

right to personal security and inviolability. Section 4 affirms that "Every person has a right to the safeguard of his dignity, honour or reputation". Section 25 states that "Every person arrested or detained must be treated with humanity and with the respect due to the human person".

Section 19 of the Civil Code reaffirms the inviolability of the human person and adds that "No one may cause harm to the person of another without his consent or without being authorized by the law to do so".

Finally, under section 20 of the Police Act, the Police Commission may "make an inquiry respecting the Police Force or any municipal police force and as to the conduct of any member of the Police Force, municipal policeman or special constable, of its own motion or whenever a citizen requests it to do so in writing and gives it sufficient reasons to support his request".

#### Article 9

Québec law fulfills the requirements of paragraphs 1 - 5 of article 9 of the Covenant. Paragraph 5 is interpreted to mean that recourse must be provided for the victim of

illegal arrest or detention, to enable him to establish his right to compensation. Such recourse is available under Québec civil, disciplinary and penal law.<sup>2</sup>

#### Article 10

The rights recognized in paragraphs 1 and 2 are protected by ss. 25, 26 and 27 of the Charter of Human Rights and Freedoms:

- "25. Every person arrested or detained must be treated with humanity and with the respect due to the human person.
- 26. Every person confined to a house of detention has the right to separate treatment appropriate to his sex, his age and his physical or mental condition.
- 27. Every person confined to a house of detention while awaiting the outcome of his trial has the right to be kept apart, until final judgment, from prisoners serving sentence."

Similarly, s. 17 of the Probation and Houses of Detention Act (SQ 1969, c. 21 as amended by the 1978 statutes, Bill 85) states that:

"Every house of detention shall be equipped in such a way that the persons who are there pending the conclusion of their trial are kept separate from those who are serving sentences there."

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2. See also the comments on article 7 above.

Section 106\* of the Courts of Justice Act (RSQ 1964, c. 20) provides that:

"106. The Social Welfare Court is authorized to take cognizance of cases of juvenile delinquents within the meaning of the Juvenile Delinquents Act (R.S.O. 1952, Chap. 160)."

Subsections 2(1) and 2(2) of that Act define a child as "any boy or girl apparently or actually under the age of eighteen years ...".

Social Welfare Court Judges are also authorized to decide, among other things, on the admission of children to youth protection schools and on infringements or provincial laws or municipal by-laws committed by children of less than eighteen years of age (s. 106(a) and so on).

Paragraph 3 of article 10 of the Covenant is reflected in the Probation and Houses of Detention Act (SQ 1969, c. 21).

Paragraph 2 of s. 4 of this Act provides that the Director General of Probation "shall . . . facilitate the

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\* Section 106 was recently replaced by section 140 of the Youth Protection Act (L.Q. 1977, c.20) which was proclaimed 15 January 1979.



social rehabilitation of persons who have been made subject to the application of probationary measures or imprisoned in houses of detention".

To this end, ss 19, 19a, 19b, 19d, 19f and 20 authorize or oblige the Director General to take the following action:

"19. The Director General may, in accordance with the regulations made for such purpose, establish a programme to enable persons imprisoned in such house of detention as he may indicate to follow courses outside the establishment or to carry on another activity calculated to promote their social rehabilitation. 1978 Statutes, B.1185, paragraph 1.

19 a. The Director General may establish programmes of remunerated activities for persons detained in a house of detention.

For that purpose he may, in particular:

- (a) enter into an agreement with a third party for the purpose of procuring work for a detained person;
- (b) entrust to a detained person the management of services within a house of detention or the carrying out of duties relating to such services;
- (c) authorize the production and sale of goods or services by a detained person;
- (d) authorize a detained person to carry on an employment outside a house of detention. 1978 Statutes, Bill 85, paragraph 1.

- 19b. The remuneration owing to a person detained in a house of detention shall be paid to the warden of the house of detention who shall make the deductions prescribed by an act in force in Québec or a statutory instrument thereunder, or by a court judgment, as the case may be.

The warden shall remit to the detained person, out of the remuneration owing to him, the allowance determined by regulation.

Subject to section 19c, the balance of the remuneration shall be deposited in a financial institution and credited to the account of the detained person unless there is a contrary agreement written and authorized by the Director General. 1978 Statutes, Bill 85, paragraph 1.

- 19d. The warden of a house of detention shall make to a detained person at least every month and at the time of his release a report of the remuneration so paid for him and of the deductions or deposits made in accordance with section 19b or 19c. 1978 Statutes, Bill 85, paragraph 1.

- 19f. For the application of the Workmen's Compensation Act (Revised Statutes, 1964, Chapter 159) the Government is deemed to be the employer of a person detained in a house of detention who carries out work under a programme of remunerated activities, unless another person is the employer of the detained person, at the time of the accident.

The compensation to which a detained person is entitled shall be computed on the basis of his average weekly earnings established by the Commission des accidents du travail de Québec, taking into account the income that the detained person would have earned at the time of the accident if, at the time of such accident, he had been carrying

on the employment he was carrying on before his imprisonment; however, if the commission cannot so establish the average weekly earnings, it shall determine such average according to the method it considers best suited to the circumstances.

Sections 19b, 19c and 19d apply to the compensation to which a detained person is entitled. 1978 Statutes, Bill 85, paragraph 1.

20. The Director General, for medical or humanitarian reasons or to facilitate the rehabilitation of a person imprisoned in a house of detention, may authorize such person to be absent temporarily from such establishment, on such conditions as he determines in accordance with the regulations made for such purpose."

#### Article 11

Imprisonment for inability to fulfill a contractual obligation has been removed from Québec Law. The right recognized in the article is guaranteed by section 24 of the Charter, which stipulates that "No one may be deprived of his liberty or his rights except on grounds provided by law and in accordance with prescribed procedure".

#### Article 12

The freedom to choose and change domicile is recognized in Québec by Articles 80 and 81 of the Civil Code:

"80. Change of domicile, is effected by actual residence in another place, coupled with the intention of the person to make it the seat of his principal establishment.

81. The proof of such intention results from the declarations of the person and from the circumstances of the case."

### Article 13

The federal government has constitutional jurisdiction in this area.

### Article 14

Québec law adequately covers all the rights listed in this article, except those mentioned in paragraph 6. For comments on this see below: "5- Measures limiting the rights set forth in the International Covenant on Civil and Political Rights".

Most of these rights can be found in Chapter III of the Charter, which deals with judicial rights. The right to legal assistance without payment, affirmed in paragraph 3(d), is guaranteed in Québec law by section 4 of the Legal Aid Act (S.Q. 1972, c.14), which provides that "An economically underprivileged person who can establish the probable existence



of a right or, as the case may be, the need of legal service is entitled to receive legal aid under this act." The right not to testify against oneself, affirmed in paragraph 3(g), is protected in Québec law by a reference in the Summary Convictions Act (R.S.Q. 1964, c. 35,) to the Canada Evidence Act (R.S.C. 1970, c. E-10). Under section 4 of that Act, anyone accused of breaking the law is competent to give evidence in his own defence. Under the rules governing cross-examination, the prosecution may not force the accused to give evidence if the defence does not call him as a witness.

Finally, the provisions of the Charter concerning the protection of minors are supplemented by the Courts of Justice Act (R.S.Q. 1964, c. 20) which recognizes the competence of the Social Welfare Court "to take cognizance of cases of juvenile delinquents" and of "infringements of provincial laws or municipal by-laws committed by children of less than 18 years of age", and by the Youth Protection Act (R.S.Q. 1964, c. 220)\*, which provides that judges of the Social Welfare Court can commit children to youth protection schools.

#### Article 15

Section 37 of the Charter of Human Rights and Freedoms states that:

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\* The Act was recently replaced by the Youth Protection Act (L.Q. 1977, c.20) which was adopted 19 December 1977 and was proclaimed 15 January 1979.

"No accused person may be held guilty on account of any act or omission which, at the time when it was committed, did not constitute a violation of the law."

#### Article 16

Section 1 of the Charter of Human Rights and Freedoms states that "every human being ... also possesses juridical personality".

Article 18 of the Civil Code also provides that:

"18. Every human being possesses juridical personality.

Whether citizen or alien, he has the full enjoyment of civil rights except as otherwise expressly provided by law."

#### Article 17

Section 5 of the Charter covers the right to a private life; section 7 affirms the inviolability of a person's home; and section 4 protects dignity, honour and reputation. The Press Act (R.S.Q. 1964, c. 48) also makes provision for the rights of a person who feels that his dignity, honour or reputation has been injured in a newspaper article. Civil remedies in damages are also available.

Article 18

Section 3 of the Charter of Human Rights and Freedoms provides that:

- "3. Every person is the possessor of the fundamental freedoms, including freedom of conscience, freedom of religion, freedom of opinion, freedom of expression, freedom of peaceful assembly and freedom of association."

Article 19

Freedom of opinion is affirmed in Quebec law by s.3 of the Charter of Human Rights and Freedoms (see above, cited under article 18). Section 10 of the Charter also states that no one may discriminate on the basis of, among other things, religion or political convictions.

There are legal provisions regarding the restrictions set forth in paragraph 3 of this article.

The fourth paragraph of the preamble to the Charter of Human Rights and Freedoms provides that:

"Whereas the rights and freedoms of the human person are inseparable from the rights and freedoms of others; and from the common well-being;"

Section 4 of the Charter recognizes that:

"4. Every person has a right to the safeguard of his dignity, honour and reputation."

Section 5 states that "every person has a right to respect for his private life".

Section 11 of the Charter provides that:

"11. No one may distribute, publish or publicly exhibit a notice, symbol or sign involving discrimination, or authorize anyone to do so."

Finally, the Civil Code provides for punishment of infringement of these rights by means of a remedy in damages:

"1053. Every person capable of discerning right from wrong is responsible for the damage caused by his fault to another, whether by positive act, imprudence, neglect or want of skill."

#### Article 20

Please refer to the comments given under the preceding article.



Article 21

Section 3 of the Charter affirms the freedom of peaceful assembly.

Article 22

Section 3 of the Charter recognizes freedom of association, and section 17 forbids any discrimination in admission to, enjoyment of the benefits of, or suspension or expulsion from an association of employers or employees. The Labour Code (R.S.Q. 1964, c. 141) provides in detail for the organization and the functioning of union groups. Finally, the Professional Syndicates Act (R.S.Q. 1964., c. 146) provides for the constitution and powers of unions, and for the procedure for their liquidation.

Article 23

Please refer to the comments given under article 3 of the Covenant.

Article 24

Section 10 of the Charter of Human Rights and Freedoms also applies to children:

"10. Every person has a right to full and equal recognition and exercise of his human rights and freedoms, without distinction, exclusion or preference based on race, colour, sex, sexual orientation, civil status, religion, political convictions, language, ethnic or national origin or social condition.

Discrimination exists where such a distinction, exclusion or preference has the effect of nullifying or impairing such right."

Section 39 of the same Charter provides that:

"39. Every child has a right to the protection, security and attention that must be provided to him by his family or the persons acting in their stead."

Finally, the obligation to register births is provided for in Articles 53 and 54 of the Québec Civil Code:

"53a. Within four months of a birth that has not been registered with a person authorized to keep registers of sets of civil status, the father or the mother of the child or, in their absence, the person having custody of the child, must have the birth registered with the secretary-treasurer or the clerk of the municipality of the applicant's domicile or with the nearest justice of the peace; the latter, within the first two weeks of the month of January each year, shall report the births so registered to the secretary-treasurer or the clerk of the municipality.

In the case of a birth taking place in the territory of Abitibi, Mistassini, Ashuanipi or New-Quebec, the father, the mother or, in their absence, the person having custody

of the child, must have such birth registered within twelve months thereafter with the secretary-treasurer or the clerk of the municipality in which is situated the registry office of the registration division of which the territory forms part.

54. Acts of birth set forth the day and the place of the birth of the child, that of its baptism, if performed, its sex, and the names given to it; the names, surnames, occupation and domicile, of the father and mother, and also of the sponsors, if any there be."

#### Article 25

Section 21 and 22 of the Charter of Human Rights and Freedoms state that:

- "21. Every person has a right of petition to the National Assembly for the redress of grievances.
22. Every person legally capable and qualified has the right to be a candidate and to vote at an election."

#### Article 26

Québec would like to make some observations on the scope of the principle of equality before the law, and on the application of article 26 of the Covenant.

The study of comparative law demonstrates that the principle of universal equality before the law is applied in a particular way, which is essential if its purpose is to be achieved. In Québec, our Civil Code and certain other laws provide examples of distinctions made according to circumstances, age, civil status or mental state, that deny certain rights to certain groups of people. These distinctions are always made in the public interest in the widest sense of the term, and involve the concepts of morality, security, or protection for specific cases, as in the legislation governing minors, interdicted persons and the mentally deficient. It follows that the assumption on which the principle is based will also be affected by this need to make distinctions, and that the prohibition against discrimination will itself have to make distinctions.

We feel that contrary to the express provisions of article 2 of the Covenant, the provisions of article 26 should apply to all legislation of each State Party, and not only to the rights recognized in the Covenant.

In Québec, the second paragraph of the preamble to the Charter of Human Rights and Freedoms states:



"Whereas all human beings are equal in worth and dignity, and are entitled to equal protection of the law;"

The prohibition against discrimination is contained in s.10 of the same Charter:

"10. Every person has a right to full and equal recognition and exercise of his human rights and freedoms, without distinction, exclusion or preference based on race, colour, sex, sexual orientation, civil status, religion, political convictions, language, ethnic or national origin or social condition.

Discrimination exists where such a distinction, exclusion or preference has the effect of nullifying or impairing such right."

#### Article 27

The fundamental freedoms recognized in s.3 of the Charter of Human Rights and Freedoms include freedom of religion.

Section 43 of the same Charter provides that:

"43. Persons belonging to ethnic minorities have a right to maintain and develop their own cultural interests with the other members of their group."

We have voluntarily limited ourselves to these comments, because the articles analysed were those most likely to affect Quebec's legislation in the field of human rights. The other articles were analyzed and, bearing in mind the sharing of constitutional competence, were found to be in accordance with our Charter of Human Rights and Freedoms.

5. Measures limiting the rights set forth in the International Covenant on Civil and Political Rights

Article 14, paragraph 6.

This article states the principle under which every victim of a judicial error is compensated according to law.

No such provision exists in Quebec law.

In accordance with paragraph (e) of section 67 of the Charter the Commission des droits de la personne has made the necessary representations to Quebec's Ministers of Intergovernmental Affairs and of Justice.

6. Recourse available to persons whose rights have been violated

On this point, please see Nos 3 and 4 of this report.

7. Difficulties in implementing the Covenant

No comments.

8. Progress made in the recognition of rights affirmed in the Covenant

Aside from the comments made in No. 5 of this report, it can be said that Québec's legislation is in conformity with the rights recognized by the International Covenant on Civil and Political Rights. Occasionally it even offers a more solid guarantee of these rights, the prohibition of any discrimination based on sexual orientation for example, while at the same time protecting "the enjoyment or exercise of any human right or freedom not enumerated (in the Charter)." (Charter, s.50).

The Commission des droits de la personne does not, however, consider a simple correspondence between national and international standards to be sufficient. Though it believes Québec's Charter to be a perfectible instrument, the Commission is well aware of the extent of the rights recognized in the Charter, and of its own obligation to "promote, by every appropriate measure, the principles enunciated in this Charter". For the Commission, this legal obligation is

expressed in a willingness to implement those principles effectively. Each of the Commission's different services is engaged in bringing to fruition the ideal of "free human beings enjoying civil and political freedom, and freedom from want".

It is in our everyday life that this ideal is achieved and will be achieved: by corrective action, certainly, but above all by education, a task to which we devote a large part of our energy.



## 10. SASKATCHEWAN

### Introductory

The Government of Saskatchewan is continuing to review all Saskatchewan legislation to ensure that it is in compliance with the International Covenant on Civil and Political Rights. For the most part, Saskatchewan legislation is in harmony with the International Covenant, and the exceptional situations where discrepancies can be alleged are noted below. The area of sexual distinctions is a matter of concern, and there are unresolved problems concerning maintenance, division of property, custody of children, pension rights, etc.

### Article 1

The Province of Saskatchewan subscribes to the principles of self-determination and to control by the people of Saskatchewan of the natural resources of the Province. In a number of areas, particularly energy and potash, it has purchased resources from private owners to ensure provincial control.

### Articles 2 and 26

The Saskatchewan Bill of Rights Act, the Fair Accommodation Practices Act, and the Fair Employment Practices Act all enshrine the enjoyment of certain rights without discrimination because of the race, creed, religion, colour, sex, nationality,

ancestry or place of origin of any person. The first-named statute prohibits discrimination in housing and includes the rights of freedoms of conscience, freedom of expression, peaceable assembly and association, freedom from arbitrary arrest or detention, free elections, engaging in any occupation, business or enterprise, ownership of property, membership in professional and trade associations, and education. The second statute protects the right to use any hotel, restaurant, theatre or other place to which the public is customarily admitted. The third statute prohibits discrimination in employment or by a trade union. All three statutes apply to the Crown and servants or agents of the Crown.

It is noteworthy, however, that unlike the Covenant, there is no prohibition in Saskatchewan of discrimination based on political or other opinion.

The remedies available to an aggrieved person who has been discriminated against are many and varied. Anyone contravening these statutes is guilty of an offence and subject to prosecution. An injunction may be obtained enjoining an offender from continuing an offence.

In practice, however, the effective remedy for violations of human rights has not been prosecution but the work of the Saskatchewan Human Rights Commission. The Commission has the statutory duty to forward the principle that every person is free and equal in dignity and rights; to promote understanding of, and compliance with human rights legislation; to develop

and conduct educational programs designed to eliminate discriminatory practices; to disseminate information and promote understanding of the legal rights of residents of the province; to further the principle of equality of opportunities and equality in the exercise of legal rights; to conduct research; and to forward the principle that cultural diversity is a basic human right and a fundamental human value. The Commission is specifically assigned the task of administering the three human rights statutes described earlier, investigates complaints of infringements of rights, and endeavours to effect a settlement. If the Commission is unable to effect a settlement, it may direct a formal inquiry and can subsequently order compliance with the legislation and compensation.

Between November, 1972, when the Commission was established, and March, 1977, the Commission received 690 formal complaints plus numerous miscellaneous inquiries. Of the formal complaints, one-half alleged discrimination based on sex, 38% on race or colour, 7% on nationality, 3% on religion, and the rest on other Bill of Rights violations. Of these, 97% were settled by the Commission to the satisfaction of the parties involved, and only 20 complaints proceeded to a formal inquiry.

An aggrieved person whose complaint does not fall under the jurisdiction of the Saskatchewan Human Rights Commission may complain to the Ombudsman under the provision of the The Ombudsman Act 1972, if the alleged violation of a right was committed by a governmental agency or employee of same. The

grounds of jurisdiction of the Ombudsman are wider than those of the Human Rights Commission: he may investigate, hold hearings, and make recommendations and a public report to the legislature where a decision, recommendation, act or omission is "contrary to law", "unreasonable, unjust, oppressive or improperly discriminatory", "based in whole or in part on a mistake of law or fact", or "wrong". Prisoners, hospital inmates, and anyone in the custody of another have the right of confidential communication with the Ombudsman. However, the Ombudsman cannot investigate the decision or act of the Legislative Assembly, the Cabinet, a Court, an arbitrator, a Crown solicitor, or a deputy minister.

Under the Proceedings Against the Crown Act, the Provincial Crown is liable for torts committed by its officers or agents, for breaches of duties owed to its servants or agents, for breaches of duties concerning the ownership of use of property and for any tortuous liability that would accrue to a private individual under any statute or regulation. It may be sued without the grant of a special fiat. However, although orders declaratory of the rights of persons may be made against the Crown, there can be no orders against the Crown for specific performance, for the recovery of land or other property, or injunctions or execution.

In order to ensure the protection of legal rights regardless of wealth, the Province enacted the The Community Legal Services (Saskatchewan) Act, 1974, which provides legal



services to persons and organizations in civil and criminal matters where such persons and organizations are financially unable to secure such services from their own resources.

### Article 3

All Saskatchewan human rights legislation prohibits discrimination based on sex. The Labour Standards Act specifically prohibits different rates of pay between male and female employees, and an inquiry procedure is established to deal with alleged violations of the Act, with the possibility of a formal inquiry by the Saskatchewan Human Rights Commission.

Although men and women generally have equal legal rights in Saskatchewan, there still exist some laws which were designed to protect a woman's financial position. Under The Homesteads Act, a husband cannot sell the home without the consent of his wife, but a wife can sell the home without the consent of her husband. Under The Exemptions Act, property of a deceased husband which was exempt from seizure continues to be exempt in favour of a widow or children, but a similar protection is not given to a widower. Under The Dependents' Relief Act, an allowance ordered in favour of a widow has a statutory minimum, but there is no statutory minimum in the case of a widower. Under The Automobile Accident Insurance Act, the provisions for insurance benefits to a woman dependant on an insured are less restrictive than the provisions applying to a dependant man.

#### Article 4

Saskatchewan has a Civil Defence Act, which defines civil defence as preparation for emergency and the carrying out of emergency functions, other than those for which military forces or other federal agencies are primarily responsible, in case of enemy attack, sabotage or other hostile action; and specifically includes prevention or repair of damage; fire fighting, police, medical, nursing, health, welfare, engineering, air raid warning and other services; institution and maintenance of communications and other means of defence, evacuation of persons and property, transportation; and incidental matters. The Act also covers disasters, which are defined as emergencies caused by fire, flood, tempest or other calamity.

There are no specific provisions in the Act authorizing the violation of the rights of others other than general provisions concerning the ability to take measures for the purpose of civil defence or of meeting any disaster. However, the Act provides that if an emergency has been officially declared authorized persons acting with respect to the emergency or disaster shall not be liable for damage caused by interference with the rights of any person or be subject to any proceedings by way of injunction or mandamus.

#### Article 5

Section 12 of The Saskatchewan Bill of Rights prohibits the publication or display of any notice, sign, symbol, emblem

or other representation tending to deprive or restrict, because of the race, creed, religion, colour, sex, nationality, ancestry or place of origin of any person, his enjoyment of any right to which he is entitled under the law.

#### Article 6

The inherent right to life is supported by The Saskatchewan Hospitalization Act and The Saskatchewan Medical Care Insurance Act which provide for free hospital and medical care for all residents of the Province. Under the Emergency Medical Aid Act, 1976, persons rendering emergency medical assistance to an injured person are not liable for damages for injury or death caused by the assistance except in the case of gross negligence.

#### Article 7

Police officers, correctional, custodial, and medical staff, and persons conducting medical or scientific experiments are all governed by the same laws as private individuals. No person may assault another unless he is specifically justified by law. In the event of an unjustified assault, the victim has a right of action for damages. Under The Corrections Act, however, imprisonment may include such treatment as is considered appropriate for the rehabilitation of a prisoner.

Under The Police Act, the Saskatchewan Police Commission may inquire into any matter relating to the conduct or perfor-

mance of duty by any police officer.

#### Article 8

Under The Corrections Act, imprisonment may include the performance of labour. Compulsory labour is also possible under The Prairie and Forest Fires Act under which an owner or occupier of land must assist without remuneration in the protection of his land or property; and anyone is guilty of an offence who refuses to assist a natural resources officer or fire ranger.

In civil disputes Courts do not order specific performance of contracts for personal services, but could make an award of damages.

#### Article 9

Section 6 of The Saskatchewan Bill of Rights provides:

Every person and every class of persons shall enjoy the right to freedom from arbitrary arrest or detention, and every person who is arrested or detained shall enjoy the right to an immediate judicial determination of the legality of his detention and to notice of the charges on which he is detained.

Prosecutions for provincial offences are conducted under the summary conviction procedure of the Criminal Code, and the federal bail procedure also applies. Any person unlawfully detained could apply for a writ of *habeas corpus* to have the validity of his detention considered by a Court, and unlawful detention could give rise to an action for damages based on



false arrest or false imprisonment. Under The Criminal Injuries Compensation Act, compensation may be paid where anyone is injured or killed as a result of a criminal offence.

Two statutes allow for the possibility of detention without charge. Under The Summary Offences Procedure Act, a peace officer may hold in custody for up to twenty-four hours a person found intoxicated in a public place. Under The Mental Health Act, mentally disordered persons may be detained if necessary for their own protection or welfare or for the welfare of others. A person detained under the latter statute may appeal to a review panel and subsequently to the Courts against his detention.

#### Article 10

The preamble to The Corrections Act provides that so far as practicable every offender should be given such help, guidance, retraining and treatment as is most likely to rehabilitate him. However, rehabilitation efforts within correctional institutions have not been very successful.

Separate facilities are available for juvenile offenders. At the present time Saskatchewan does not have separate holding facilities for accused persons to be completely segregated from convicted persons. However, accused persons are held in separate wings of existing facilities, and are given access to services such as lawyers and telephones, which are not available to convicted persons. Further, new correctional facilities

which are being built provide for complete segregation of the two groups.

#### Article 11

There is no violation of this provision in any Saskatchewan law.

#### Article 12

Everyone in Saskatchewan has liberty of movement except that under The Public Health Act persons infected or exposed to a communicable disease may be quarantined, and under The Prairies and Forest Fires Act, forests may be closed during the summer for protection.

#### Articles 13, 14, 15

Most of these matters fall under federal jurisdiction, but insofar as they are provincial with one exception outlined below there are no provincial laws contravening them. Court proceedings are held in public before an independent judiciary, but juvenile court proceedings are required to be held in private under The Family Services Act, as are proceedings under The Children of Unmarried Parents Act.

Procedures against persons accused of provincial offences, i.e., the more minor offences, are generally the same as for federal offences, and the same safeguards for an accused apply. The Interpretation Act has a specific provision

against double punishment. The act further provides that:

"23.(2) Where an Act or enactment is repealed in whole or in part or a regulation revoked in whole or in part and other provisions are substituted therefor:

(e) if any penalty, forfeiture or punishment is reduced or mitigated by any of the provisions so substituted, the penalty, forfeiture or punishment if imposed or adjusted after the repeal or revocation, shall be reduced or mitigated accordingly."

#### Article 16

In Saskatchewan a person obtains full legal status before the law on attaining the age of eighteen years. Persons may lose the right to manage their affairs if they are declared incompetent under The Mental Health Act or The Mentally Disordered Persons Act.

#### Article 17

Saskatchewan has enacted The Privacy Act, 1974, which makes it a tort, actionable without proof of damage, for a person, wilfully and without claim or right, to violate the privacy of another person. Examples given in the Act of violations of privacy include surveillance, telephone-tapping, using another's name, likeness of voice for advertising or promotion, or use of another's letters, diaries or other personal documents. Certain safeguards are provided in the Act to protect public interests. In the event of a violation of privacy, the Court may award damages, grant an injunction,

order an accounting of profits, order a return of articles or documents, or grant any other relief that appears necessary.

There also are statutes such as The Statistics Act and The Venereal Disease Prevention Act which prohibit disclosure of information acquired under the provisions of the statute.

The Credit Reporting Agencies Act, 1972, is designed to ensure that credit reports are properly used and that they are accurate and relevant. Every credit reporting agency must take reasonable steps to assure the maximum accuracy of the report, cannot divulge information to unauthorized persons, and cannot include certain types of information in a report. Any person is entitled to see the information concerning him held by a credit reporting agency, and may demand a correction of inaccurate information. Provisions in The Collection Agents Act prohibit the use of harassing tactics against a debtor or his family by a collection agent.

The general provisions of The Libel and Slander Act codify and simplify the procedure in such actions.

#### Article 18

Section 3 of The Saskatchewan Bill of Rights protects the right to freedom of conscience, opinion and belief, and freedom of religious association, teaching, practice and worship.

The liberty of parents to ensure the religious and moral



education of their children in conformity with their own convictions is well protected by The Education Act, 1978. Protestant or Roman Catholic minorities in any school district may establish a denominational school and receive a fair share of tax money for educational purposes. Religious instruction may be given in any school, public or separate, for two and one-half hours per week, but not to any pupil whose parent or guardian objects. A pupil is exempted from school attendance on a holy day of the church of which he or his parent or guardian is a member.

When a child is being placed in a home for adoption under The Family Services Act, consideration must be given to any statement made by the parent about the religious faith in which he prefers the child to be raised, but a stated religious preference is not a barrier to the placement of a child when a suitable home of the stated religious preference is not available.

The Infants Act contains a provision that nothing in the Act changes the law as to the authority of the father in respect of the religious faith in which his child shall be educated.

#### Article 19

Section 4 of The Saskatchewan Bill of Rights protects the right of freedom of expression through all means of communications, including speech, the press, radio and the

arts. However, section 12 prohibits the publishing or displaying of any notice, sign, emblem or representation tending to deprive or restrict the enjoyment of a right of any person because of his race, creed, religion, colour, sex, nationality, ancestry or place of origin.

Limitations on freedom of expression stem from the laws of libel and slander, and criminal offences such as obscenity, criminal libel, contempt of court, advocating genocide, and inciting hatred against any group. Under The Theatres and Cinematographs Act, the Saskatchewan Film Classification Board has power to approve or disapprove films intended for exhibition in Saskatchewan, and certain types of newspaper advertisements of films are prohibited.

#### Article 20

Propaganda for war is not prohibited by law, but inciting hatred against any group is prohibited by the Criminal Code.

#### Article 21, 22

Section 5 of The Saskatchewan Bill of Rights provides as follows:

Every person and every class of persons shall enjoy the right to peaceable assembly with others and to form with others associations of any character under the law.

Trade union rights are specifically protected by The Trade Union Act, section 3 of which provides:

Employees have the right to organize in and to form, join or assist trade unions and to bargain collectively through a trade union of their own choosing; and the trade union designated or selected for the purpose of bargaining collectively by the majority of the employees in a unit appropriate for that purpose shall be the exclusive representative of all employees in that unit for the purpose of bargaining collectively.

The Labour Relations Board, established under the Act, has the power to require an employer to bargain collectively, to require any person to refrain from discriminating against a union or union member in any way, and to require an employer to reinstate any employee discharged under circumstances constituting an unfair labour practice.

#### Article 23

The Family Services Act provides that the Minister of Social Services may do such things as he considers advisable to promote the growth and development of community services and resources designed to support families in the proper care of their children and to prevent circumstances that lead to family breakdown.

Everyone of eighteen years is entitled to marry unless they are mentally retarded, mentally ill, or have, in a communicable state, a communicable disease.

Controversy has arisen concerning the disposition of property owned by a husband or wife in the event of a dispute between them. Under the The Married Persons Act, the Courts, since 1975, have complete discretion to divide property in any

way considered fair and equitable. In making that determination, the Judge must take into account the respective contributions of the husband and wife whether in the form of money, services, prudent management, caring for the home and family or in any other form whatsoever.

#### Article 24

The Family Services Act contains elaborate provisions designed to protect a child against neglect, abuse, exploitation or cruel treatment. A parent who is unable to make adequate provision for his child may place the child under the care, custody or supervision of the Minister. Every person having information that a child is in need of protection is under an obligation to report the information to a peace officer. Children reasonably believed to be in need of protection may be taken into custody and brought before a Judge to determine what should be done with them. There are many safeguards in the procedure to protect the rights of parents, but a parent does not have the right to abuse or neglect his children.

The Queen's Bench Act, The Infants Act, The Dependants' Relief Act, The Deserted Wives' and Children's Maintenance Act, and The Children of Unmarried Parents Act all contain various provisions under which parents can be forced to support their children, legitimate or illegitimate.

Under The Vital Statistics Act, every child must have a name and have its birth registered within fifteen days of its birth.



Article 25

Section 7 of The Saskatchewan Bill of Rights provides:

Every qualified voter resident in Saskatchewan shall enjoy the right to exercise freely his franchise in all elections and shall possess the right to require that no Legislative Assembly shall continue for a period in excess of five years.

Under The Election Act, persons entitled to vote must be Canadian citizens, eighteen years of age and ordinarily resident in Saskatchewan for at least six months. Those disqualified from voting are Judges, prisoners, mentally incompetent persons, certain electoral officials, and members of The Local Government Board. The qualifications of a candidate in an election are similar to those of a voter.

Under The Public Service Act, positions are separated into classified and unclassified divisions. Appointments in the classified service are made by The Public Service Commission on the basis of seniority, merit and fitness. The Commission conducts examinations to establish promotion and employment lists, and eligible persons are ranked in the order of their final ratings in the examination. The examinations must fairly determine the qualifications, fitness and ability of the persons tested to perform the duties of the positions to be filled, but no examination shall elicit information concerning the political or religious opinions or affiliations of an applicant.

The Public Service Act also deals with the question of political activity by civil servants. No person in the public service may be compelled in any manner to take part in any

political undertaking or make any contribution; directly or indirectly use his official authority or influence to modify the political action of any other person; engage in any form of political activity during his hours of duty; or at any time take such part in political activities as to impair his usefulness in his position. However, a civil servant who desires to become a candidate for public office is entitled to a leave of absence for thirty days prior to the date of the election.

#### Article 27

The Saskatchewan Multicultural Act, 1974, was enacted to encourage multiculturalism and to provide assistance to individuals and groups to increase their opportunity to learn about the nature of their cultural heritage and about the contribution of the cultural heritage of other groups. Provision is made for grants for multiculturalism programs, and for the establishment of a Saskatchewan Multiculturalism Advisory Council.

The Department of Culture and Youth Act also states that the department shall initiate, conduct and encourage programs and activities providing for the orderly cultural, physical and social development of the province or of any class of persons.

One of the prescribed duties of The Saskatchewan Human Rights Commission is to forward the principle that

cultural diversity is a basic human right and a fundamental human value.

The Education Act makes provision for the establishment of tax-supported denominational schools by Protestant or Roman Catholic minorities. School attendance is compulsory but a parent is excused if a pupil is under an approved program of instruction at home or elsewhere. English is the language of instruction in schools, but a board of education may pass a resolution that any other language be the language of instruction in any specified school. The provincial cabinet may also designate schools in which French will be the principal language of instruction in a designated program.



















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